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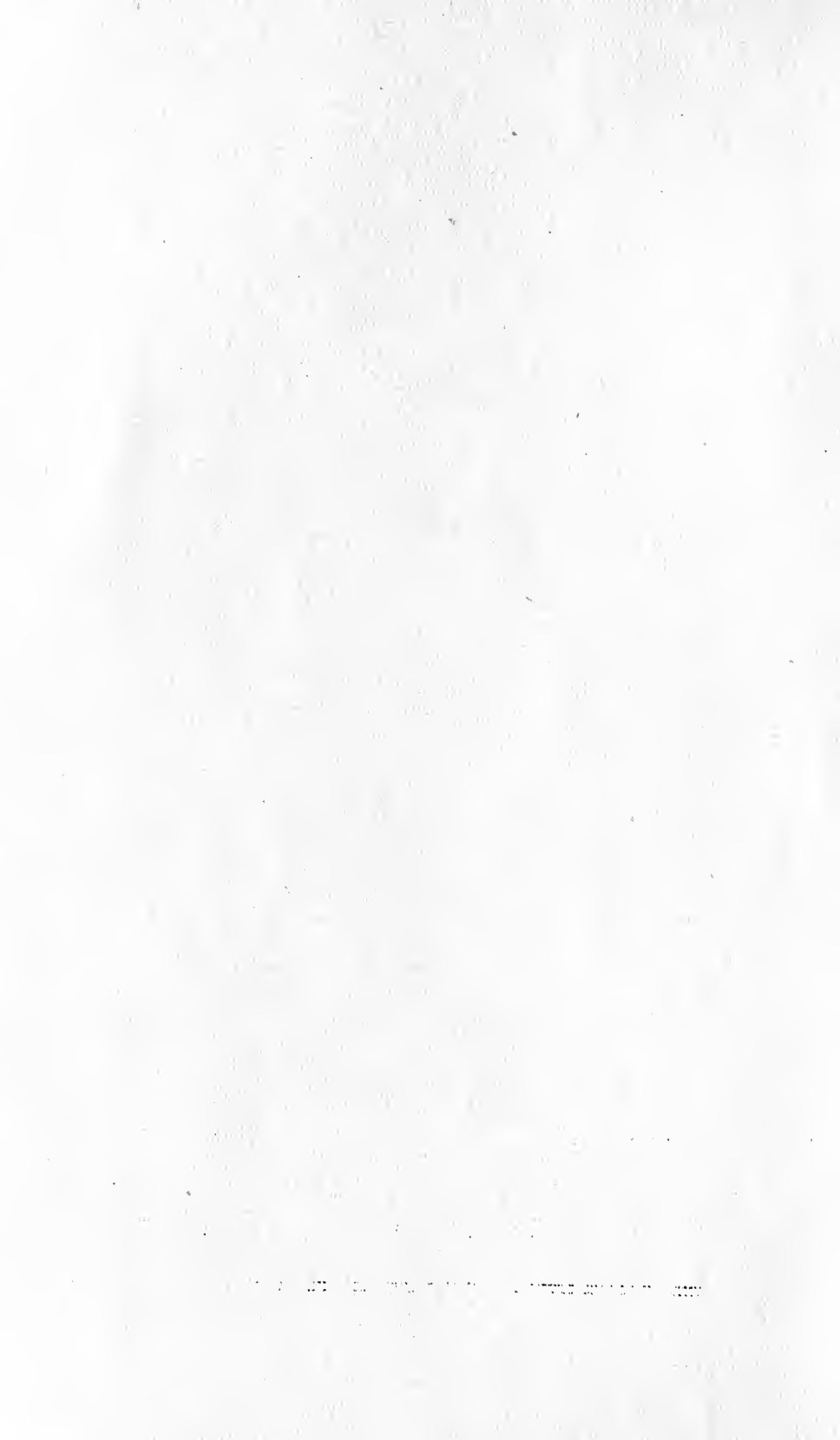




Irrigation Laws of New Mexico



Compiled by the State Engineer for the Board of
Water Commissioners, July, 1920.



New Mexico Laws, statutes,

IRRIGATION LAWS

— OF THE —

STATE OF NEW MEXICO

— WITH —

An Index of Decisions of the State Board of Water
Commissioners
Opinions Renedered by the Attorney General
and Water Decisions by the
Supreme Court

Compiled by the State Engineer for the Board
of Water Commissioners
July, 1920

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Constitutional Provisions.

Adopted January 21st, 1911

ARTICLE XVI

Irrigation and Water Rights.

Section 1. All existing rights to the use of any waters in this state for any useful or beneficial purposes are hereby recognized and confirmed.

Sec. 2. The unappropriated waters of every natural stream, perennial or torrential, within the State of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use. In accordance with the law of the State, priority of appropriation shall give the better right.

Sec. 3. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

Sec. 4. The Legislature is authorized to provide by law for the organization and operation of drainage districts and systems.

IRRIGATION LAWS OF NEW MEXICO

As Amended to Date

Section 1. (Sec. 5654, 1915 Code.) All natural waters flowing in streams and water courses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use.

Act of Mar. 19, '07; L. '07, C. 49, §1.

See Sec. 5731.

For constitutional provision see Art. XVI, §2.

Cited in *Turley v. Furman*, 16 N. M. 262, 114 Pac. 278, holding proposed diversion of waters in Colorado for use in New Mexico is not within the jurisdiction of the Territorial Engineer.

This section expressly limits the operation of the act of 1907 to natural public waters within the territory of New Mexico, with the further limitation that it is water flowing in streams and water courses.

Vanerwork v. Hewes, 15 N. M. 439, 110 Pac. 567.

For a discussion of water rights prior to the adoption of this statute.

See *Hagerman Irrigation Co. v. McMurray*, 16 N. M. 179, 113 Pac. 823.

An arroyo which comes out of hills in a well defined channel is a natural water course although water does not run in it during the entire year.

Ditch Co. v. Garcia, 17 N. M. 160; 124 Pac. 891.

Sec. 2. (Sec. 5655, 1915 Code.) Beneficial use shall be the basis, the measure and the limit of the right to the use of water, and all waters appropriated for irrigation purposes, except as otherwise provided by written contract between the owner of the land and the owner of any ditch, reservoir or other works for the storage or conveyance of water, shall be appurtenant to specified lands owned by the persons, firm or corporation having the right to use the water, so long as the water can be beneficially used thereon, or until the severance of such right from the land in the manner hereinafter provided in this article. Priority in time shall give the better right. In all cases of claims to the use of water initiated prior to March 19, 1907, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys, and construction for the application of the water to a beneficial use. All claims to the use of water initiated thereafter shall relate back to the date of the receipt of an application therefor in the office of the territorial or state engineer, subject to compliance with the provisions of this article, and the rules and regulations established thereunder.

Act of Mar. 19, '07; L. '07, C. 49, §2.

For constitutional provisions see Art. XVI, §3.

For further provisions making water appurtenant to land see Sec. 5703.

Sec. 3. (Sec. 5656, 1915 Code.) The United States, the State of New Mexico, or any person, firm, association or corporation, may exercise the right of eminent domain, to take and acquire land right-of-way for the construction, maintenance and operation of reservoirs, canals, ditches, flumes, aqueducts, pipe lines or other works for the storage or conveyance of water for beneficial uses, including the right to enlarge existing structures, and to use the same in common with the former owner; any such right-of-way for canal, ditch, pipe line, or other means for the conveyance of water shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and right-of-way shall be acquired in the manner provided by law for the condemnation and taking of private property in the State of New Mexico for railroad, telegraph, telephone and other public uses and purposes. The engineers, and surveyors, of the United States, the State, and of any person, firm or corporation shall have the right to enter upon the lands and waters of the State and of private persons and of private and public corporations, for the purpose of making hydrographic surveys and examinations and surveys necessary for selecting and locating suitable sites and routes for reservoirs, canals, pipe lines, and other water works, subject to responsibility for any damage done to such property, in making such surveys.

Act of Mar. 19, '07; L. '07, C. 49, §3.

Cited in *City of Albuquerque v. Garcia et al.*, 17 N .M. 445; 130 Pac. 118.

The terms of this section and section 5719 are broad and include every person having a water right and the right of condemnation given is not limited to those whose rights are acquired or regulated by the act of which they are a part. The right of eminent domain under these sections extends to community ditches constructed prior to the passage of this act.

Pueblo of Isleta v. Tondre, 137 Pac. 86

Sec. 4. (As amended by L. 1919, Chap. 46.)

"There shall be a state engineer who shall be a technically qualified and experienced hydraulic engineer, and who shall be appointed by the governor and such appointment confirmed by the senate. He shall hold office for the term of two years from and after his appointment, or until his successor shall have been appointed, and shall have qualified. He shall be subject to removal only for cause. He shall have general supervision of the water of the state and of the measurement, appropriation, and distribution thereof, and such other duties as are required by this article. He shall receive a salary of three thousand dollars per annum and actual necessary traveling expenses while away from his office in the discharge of official duties. The office of the state engineer shall be located at the seat of government. He shall not engage in any private prac-

tice except as consulting engineer; Provided, however, that he may establish a schedule of fees for drawing plans, preparing specifications and giving expert advice and other services as consulting engineer, and charge such fees for services, making a report to the state auditor of all fees and compensation paid to him for such services; Provided, further, that when the total amount collected for such services as consulting engineer as hereinbefore defined shall have amounted to the sum of two thousand dollars, that any fees collected thereafter, during any one year, shall be turned into the treasury of the State.

Sec. 2. All Acts or parts of acts in conflict herewith are hereby repealed.

Sec. 5. (Sec. 5658, 1915 Code.) The state engineer may employ assistants and purchase materials and supplies for the proper conduct and maintenance of his office and department, in pursuance of appropriations as made from time to time for such purposes. The salaries and expenses of the office of the state engineer shall be paid at the same time and in the same manner as those of other officers of the state.

Act of Mar. 19, '07; L. '07, C. 49, §5.
20 N. M. 579; 151 Pac. 233.

Sec. 6. (Sec. 5659, 1915 Code.) Before entering upon the duties of his office the state engineer shall take the oath as prescribed by law for state officials. He shall file with the secretary of the state, a bond, in the penal sum of ten thousand (\$10,000) dollars, to be approved by the attorney general, and conditioned upon the faithful discharge of his duties, and for delivery to his successor of all property belonging to the public then in his possession or control.

Act of Mar. 19, '07; L. '07, C. 49, §6.
For oath see Constitution, Art. XX, §1.

Sec. 7. (Sec. 5660, 1915 Code.) All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the state engineer and which are payable from the funds appropriated for the prosecution of the work under his direction and supervision shall be approved by the state engineer and properly vouchered and filed in the office of the state auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrant on the treasurer in payment thereof.

Act of Mar. 19, '07; L. '07, C. 49, §7.
20 N. M. 579; 151 Pac. 233.

Sec. 8. (Sec. 5661, 1915 Code.) The state engineer shall prepare and deliver to the governor, on or before November 30th of the year preceding the regular session of the legislature, and at other times when required by the governor, a full re-

port of the work of his office including a detailed statement of the expenditures thereof to and including October 31st, with such recommendations for legislation and appropriation as he deems advisable.

Act of Mar. 19, '07; L. '07, C. 49, §8.

Sec. 9. (Sec. 5662, 1915 Code.) The state engineer shall receive the following fees, to be paid by him into the hydrographic survey fund of the state treasurer provided for in this article upon the last day of March, June, September and December of each year.

Fees for Application for Permit to Appropriate Water.

(a) For filing and examining an application for permit to appropriate water where the project is chiefly for diversion and direct use of the water, ten dollars if the amount claimed does not exceed five cubic feet per second and one dollar for each cubic foot of water per second in excess of five. For filing and examining an application for permit to appropriate water where the project is chiefly for storage of flood waters, ten dollars for each one thousand acre feet or fraction thereof of storage capacity, such fees to include the filing and examination of maps, field notes, proofs of publication and all other papers relating to the application up to the recording of the permit to appropriate water.

Fees for Application for Water for Power Only.

(b) For filing and examining an application for permit to appropriate water for power purposes only, when the water is returned to the river bed undiminished in quantity and made available for irrigation purposes, ten dollars if the quantity does not exceed five cubic feet of water per second of time, and an additional charge of twenty-five cents for each cubic foot of water per second of time in excess of five.

Fee for Recording, Permit, Certificate of Construction, License to Appropriate, and Miscellaneous Papers.

(c) For recording and issuing any permit, certificate of construction or license to appropriate, five dollars. For issuing any miscellaneous, water right instrument or copy of any document recorded in his office, one dollar for the first one hundred words or fraction thereof, and fifteen cents for each additional one hundred words or fraction thereof.

Fee for Miscellaneous Filings.

(d) For filing any other paper necessarily forming a part of the permanent record of the water right application, permit or license one dollar.

Fee for Examination of Plans and Specifications.

(e) For examining in connection with any water rights application the plans and specifications for dam, one dollar for each one thousand dollars or fraction thereof of the estimated cost of such dam. For a canal or other water conduit ten dollars where the capacity does not exceed fifty cubic feet of water per second and ten dollars for each additional fifty cubic feet or fraction thereof per second of time.

Fees for Blue Prints and Permit to Extend Time.

(f) For a blue print copy of any map accompanying an application for a permit to appropriate water, two dollars for each sheet thereof.

(g) For the issuing of a permit for an extension of time, ten dollars.

Fees for Inspecting Dam Sites, Rating Ditches and Other Work.

(h) For inspecting dam sites, or construction work as required by law, ten dollars per day and actual and necessary traveling expenses. Fees for any inspection deemed necessary by the state engineer and not paid on demand shall be a lien on any land or other property of the owner of the works and may be recovered by the state engineer in any court of competent jurisdiction.

(i) For rating ditches, ten dollars per day and actual and necessary traveling expenses.

(j) For such other work as may be required of his office such reasonable fees as the character and extent of the work shall justify.

Fees—When Payable, Disposition, Refund.

The filing fees provided for in this section shall be deposited with the state engineer at the time of filing the application and upon the approval of such application the fees shall be paid into the state treasury by the state engineer for the credit of the hydrographic survey fund. In the event that the application is rejected the fees so deposited less the sum of five dollars shall be returned to applicant. If the application be approved for a portion of the amount of water claimed the state engineer shall retain the proper amount of fees based upon the amount of water for which permit is granted and return the balance to applicant.

Act of Mar. 15, '03; L. '13, C. 62, §1.

Sec. 10. (Sec. 5663, 1915 Code.) The records of the office of the state engineer are public records, shall remain on file in his office, and shall be open to the inspection of the public at all times during business hours. Such records shall show all applications filed, with date of filing, and shall show in full all permits, certificates of completion of construction, and li-

censes issued, together with all action thereon, and all action or decisions of the state engineer affecting any rights or claims to appropriate water. Certified copies of any record or papers on file in the office of the state engineer shall be evidence qually with the originals thereof; and when introduced as evidence shall be held as of the same validity as the originals.

Act of Mar. 19, '07; L. '07, C. 49, §10.

Sec. 11. (Sec. 5664, 1915 Code.) The state engineer, subject to the approval of the board of water commissioners, shall make all necessary rules and regulations to carry into effect the duties devolved upon his office.

Act of Mar 19, '07; L. '07, C. 49, §11.

Sec. 12. (Sec. 5665, 1915 Code.) The state engineer shall have the supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudication of the courts.

Act of Mar. 19, '07; L. '07, C. 49, §12.

This section cannot be held to relate to waters held in private ownership or by prior appropriation, but must be held to relate to public and unappropriated waters within the territory, and has no application to seepage water on lands of a proprietor from an unknown source.

Vanderwork v. Hewes, 15 N. M. 439, 110 Pac. 567.

This section seems to limit the jurisdiction of the Engineer to such water rights as have been acquired under licenses issued by him or his predecessors. When adjudication has been had, and a water master appointed, then, and not before, the State Engineer acquires jurisdiction to regulate the distribution of water to the various ditches and systems, both old and new, in the district.

Pueblo of Isleta v. Tondre, 137 Pac. 86.

Cited in Turley v. Furman, 61 N. M. 253, 114 Pac 278.

Sec. 13. (As amended by L. 1919, chp. 131, §2 and 8.) Sec 2. That Section 5666 of the New Mexico Statutes Annotated, Codification 1915, be and the same is hereby amended to read as follows: The state engineer shall, from time to time, as may be necessary for the economical and satisfactory apportionment of water, divide the state in conformity with the drainage areas into water districts to be designated by names, and to comprise as far as possible one or more distinct stream systems in each district Districts may be changed from time to time as may, in his opinion, be necessary for the economical and satisfactory apportionment of water. Provided, that the state engineer may, when in his opinion it shall be for the best interests of the state and the owners of water rights upon any stream system within the state of New Mexico, divide said stream system into sub-districts, each of which said sub-districts shall be designated by a distinct name. That is is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico, that the provisions of this act should become effective at the earliest possible time, an emergency is hereby declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval.

Sec. 14. (Sec. 5667, 1915 Code.) The state engineer shall upon the written application of a majority of the water users of any district in this state, appoint a water master for such district in the state, who may, for cause, be removed by the state engineer, and shall be removed upon a petition of a majority of the water users of said district. The water master shall have immediate charge of the apportionment of waters in his district under the general supervision of the state engineer, and he shall so appropriate, regulate and control the waters of the district as will prevent waste. The state engineer may, if in his opinion the public safety or interests of water users in any district in the state require it, appoint such water master for temporary or permanent service in such district, in the absence of the application above provided for in this article.

Act of Mar. 19, '07; L. '07, C. 49, §14.

For limitation upon appointment of water master see Sec. 5716.

Sec. 15. (Sec. 5668, 1915 Code.) Any person may appeal from the acts or decisions of the water master, to the state engineer, who shall promptly and, at a stated time and place, to be fixed by him, upon due notice to the parties, hear and determine the matter in dispute, and his decision shall be final, unless an appeal is taken to the board of water commissioners as provided in this article.

Act of Mar. 19, '07; L. '07, C. 49, §15.

Sec. 16. (Sec. 5669, 1915 Code.) The water master shall be allowed pay at a rate fixed by the state engineer, not exceeding four dollars per day and actual and necessary expenses in the performance of his duties. He may employ assistants in case of emergency, upon the specific authority of and at rates of pay as authorized by the state engineer, such employment to continue only during the existence of the emergency. The water master and the assistants employed by him shall be paid by the county, upon accounts approved by the state engineer. If the district is in more than one county, each county shall pay its proportionate part of each account rendered. The accounts of the water master shall in all cases specify the distribution of the amounts charged based upon the quantity of water received by each water user by each ditch owner in proportion to the total quantities delivered to all and shall show the charges to be allotted to each water user and ditch owner. The amounts paid by the counties shall be a lien upon the property of the water users and ditch owners, in accordance with the distribution thereof, as shown by the accounts of the water master, and shall be collected in the manner provided by law for the collection of taxes.

Act of Mar. 19, '07; L. '07, C. 49, §16.

Sec. 17. (Sec. 5670, 1915 Code.) Each water master shall

report to the state engineer as often as may be deemed necessary by the engineer as to the amount of water needed to supply the requirements of his districts the amount available, the works which are without their proper supply, the supply required during the period preceding his next regular report, and such other information as the engineer may require. These reports shall, at the end of each irrigation season, be filed in the office of the state engineer. The state engineer shall give directions for correcting any errors of apportionments that may be shown by such reports.

Act of Mar. 19, '07; L. '07, C. 49, §17.

Sec. 18. (Sec. 5671, 1915 Code.) The state engineer shall make hydrographic surveys and investigation of each stream system and source of water supply in the state, beginning with those most used for irrigation, and obtaining and recording all available data for the determination, development and adjudication of water supply of the state; including the location and survey of suitable sites for dams and reservoirs and the determination of the approximate water supply, capacity and cost of each. He shall be authorized to co-operate with the agencies of the United States engaged in similar surveys and investigations, and in the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of his office, and may accept and use in connection with the operations of his department the results of the agencies of the United States.

Act of Mar. 19, '07; L. '07, C. 49, §19.

This and the following section speak to the future and have no application to water rights acquired prior to the passage of the act
Pueblo of Isleta v. Tondre, 137 Pac. 86.

Sec. 19. Sec. 5672, 1915 Code.) Whenever requested so to do by any of the boards of commissioners of any of the counties of the state, it is hereby made the duty of the state engineer, either himself, or by an authorized assistant engineer, to co-operate with the said county commissioners, in the engineering work required to lay out, establish and construct any drain to be used by any county or counties or portions of the same, for the purpose of diverting flood waters, lakes, water courses, and in general to aid and assist the counties of this state or their authorized officers in making preliminary surveys and establishing systems of drainage, or any other engineering work; and whenever the board of county commissioners of any such county shall by order determine to lay out, establish and construct any drain to be used by any county or counties, or portions of the same, for the purpose of diverting flood waters, lakes or water courses, or to establish systems of drainage, which shall require that private property be taken or damaged,

the county may exercise the right of eminent domain to take and acquire real or personal property, right-of-way, and privilege within or without its corporate limits, necessary for its corporate purposes, in the manner provided by law for the condemnation and taking of private property in the state of New Mexico for railroad, telegraph, telephone and other public uses and purposes. The engineers and surveyors of the state and of the county shall have the right to enter upon the lands of private persons and of private and public corporations for the purpose of making hydrographic surveys and examinations and surveys necessary for selecting and locating suitable sites and routes for any drain or drainage system, subject to responsibility for any damage done to such property in making such surveys and examinations.

Act of Mar. 18, '09; L. '09, C. 129, §1.

For provisions covering drainage districts see Sec. 1877 et seq. and for drainage of unincorporated towns see Sec. 1959 et seq.

Sec. 20. (Sec. 5673, 1915 Code.) Upon the completion of the hydragraphic survey of any stream system, the state engineer shall deliver a copy of so much thereof as may be necessary for the determination of all rights to the use of the waters of such system together with all other data in his possession necessary for such determination, to the attorney general of the state, who shall, at the request of the state engineer, enter suit on behalf of the state for the determination of all rights to the use of such water, in order that the amount of unappropriated water subject to disposition by the state under the terms of this chapter may become known, and shall diligently prosecute the same to a final adjudication: Provided, That if suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit: Provided, however, That the attorney general shall intervene in any suit for the adjudication of rights to the use of water, on behalf of the state if notified by the state engineer that in his opinion the public interest requires such action.

Act of Mar. 19, '07; L. '07, C. 49, §20.

See note to Sec. 5671.

Cited in *Snow v. Abalos et al.*, 140 Pac. 1044.

Sec. 21. (L. 1919, Ch. 124.) All reports of hydrographic surveys of the waters of any stream system, or parts thereof, and other surveys heretofore or hereafter made by the state engineer, or under his authority, or by any engineer of the United States, or any other engineer, in the opinion of the state engineer qualified to make the same, may, when made in writing and signed by the party making the same, be filed in the office of such state engineer, and the originals or certified copies thereof, made by such state engineer, shall be received and considered in evidence in the trial of all causes

involving the data shown in such survey, the same as though testified to by the person making the same, subject to rebuttal, the same as in ordinary cases. All acts and parts of acts in conflict herewith are hereby repealed. That it is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico and the provisions of this act shall become effective at the earliest possible time, and therefore an emergency is hereby declared to exist, and this act shall take effect and be in full force and effect from and after its passage and approval.

Sec. 22. (As amended by L. 1919, Ch. 131, §3 and 8.) Sec. 3. That Section 5674 of the New Mexico Statutes Annotated Codification of 1915, as amended by Section 1, Chapter 31, Session Laws 1917, be and the same is hereby amended to read as follows: In any suit for the determination of a right to use the waters of any stream system, all those whose claim to the use of such waters are of record and all other claimants, so far as they can be ascertained, with reasonable diligence, shall be made parties. When any such suit has been filed the court shall, by its order duly entered, direct the state engineer to make or furnish a complete hydrographic survey of such stream system as hereinbefore provided in this article, in order to obtain all data necessary to the determination of the rights involved. The costs of such suit shall include the fees of witnesses, the taking of depositions and the fees of the officers for serving process and together with the costs and the expenses of the hydrographic survey or surveys on behalf of the state, shall be charged against each of the private parties thereto in proportion to the amount of water right allotted. The costs and expenses of the hydrographic survey or surveys on behalf of the state shall be a lien upon the lands and water rights of the parties to such adjudication suit, in proportion to the amount of water right allotted to each of the parties to such adjudication suit, with interest thereon at the rate of six per cent per annum until the same shall be paid as hereinafter, in Section 5 of this act, provided. The court in which any suit involving the adjudication of water rights may be properly brought shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved; and may submit any question of fact arising therein to a jury or to one or more referees, at its discretion; and the attorney general may bring suit as provided in Section 5673 in any court having jurisdiction over any part of the stream system, which shall likewise have exclusive jurisdiction for such purposes, and all unknown persons who may claim any interest or right to the use of the waters of any such system, and the unknown heirs of any deceased person who made claim of any right or interest to the waters of such stream system

in his life time, may be made parties in such suit by their names as near as the same can be ascertained, such unknown heirs by the style of unknown heirs of such deceased person and said unknown persons by the name and style of unknown claimants of interest to water in such stream system, and service of process on, and notice of such suit, against such parties may be made as in other cases by publication. That it is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico, that the provisions of this act should become effective at the earliest possible time, an emergency is hereby declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval.

Sec. 23. (L. 1919, Ch. 131, § 1 and 8; 1915 Code, §5675 and 5676.) The auditor and treasurer of the State of New Mexico are hereby authorized and directed to transfer the sum of \$25,000 from the "Water Reservoir Income Fund" to the "Hydrographic Survey Fund." That it is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico, that the provisions of this act should become effective at the earliest possible time, an emergency is hereby declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval. The sum of fifteen thousand dollars, appropriated March 17, 1913, out of monies in the treasury to the credit of the "Water Reservoirs for Irrigation Purposes Income Fund" for making hydrographic surveys or so much thereof as may have been used shall be repaid into the State Treasury for credit of said "Water Reservoirs for Irrigation Purposes Income Fund," on or before the 31st day of October, 1917, out of any monies coming into the Hydrographic Survey Fund under the provisions of section 5674. The "Hydrographic Survey Fund" shall be used only for the payment of the expenses of the surveys provided for in section 5674, and all claims for services rendered, expenses incurred or materials or supplies furnished under the direction of the state engineer in the prosecution of said work shall be approved by the state engineer and properly vouchered and filed in the office of the state auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrants against the Hydrographic Survey Fund on the state treasurer in payment thereof.

Act of Mar. 19, '07; L. '07, C. 49, §22.

Act of Mar. 17, '13; L. '13, C. 80, §1.

Sec. 24. (L. 1919, Ch. 131, §4 and 8.) The state engineer is hereby authorized and empowered to cooperate with the Federal Reclamation Service or any other Federal agency, in the making of hydrographic surveys upon any stream system which includes a Federal irrigation or drainage project. That it is

necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico, that the provisions of this act should become effective at the earliest possible time, an emergency is hereby declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval.

Sec. 25. (L. 1919, Ch. 131, §5, 6 and 8.) The cost and expenses of the hydrographic survey or surveys on behalf of the state so taxed as costs in any such water adjudication suit, shall be paid to the county clerk of the county in which the suit for the adjudication of water shall be filed, and shall be by said county clerk forthwith transmitted to the state treasurer, to be by him covered into the "Hydrographic Survey Fund." The sum of \$5,000 out of the "Hydrographic Survey Fund" shall be set aside by the state engineer for the purpose of making a hydrographic survey and such other necessary investigation or investigations by himself and his assistants, either within or without the State of New Mexico, of the La Plata river stream system and water shed, under the direction of the attorney general of the State of New Mexico, or of any special counsel appointed or employed pursuant to any act of the Legislature of the State of New Mexico, relative to the adjudication of water rights upon said La Plata river stream system or water shed, between residents of the State of New Mexico and residents of the State of Colorado. That it is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico, that the provisions of this act should become effective at the earliest possible time, an emergency is hereby declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval.

Sec. 26. (Sec. 5677, 1915 Code.) Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree shall be prepared and filed in the office of the state engineer by the clerk of the court, at the cost of the parties. Such decree shall in every case declare, as to the water right adjudged to each party, the priority, amount, purpose, periods and place of use, and as to water used for irrigation, except as otherwise provided in this article, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

Act of Mar. 19, '07; L. '07, C. 49, §23.

Application for Water for Beneficial Use; Additional Information; Field Notes, Maps, etc.; Excess Water, Sale, Time for Surveys, etc.; Priority of Application.

Sec. 27. (Sec. 5678, 1915 Code.) Any person, association or

corporation, public or private, hereafter intending to acquire the right to the beneficial use of any waters, shall, before commencing any construction for such purposes, make an application to the state engineer for a permit to appropriate, in the form required by the rules and regulations established by him. Such rules and regulations shall, in addition to providing the form and manner of preparing and presenting the application, require the applicant to state the amount of water and period or periods of annual use, and all other data necessary for the proper description and limitation of the right applied for, together with such information, maps, field notes, plans and specifications as may be necessary to show the method and practicability of the construction and the ability of the applicant to complete the same. All such maps, field notes, plans and specifications shall be made from actual surveys and measurements and shall be duly filed in the office of the state engineer after the approval of the application. The state engineer may require additional information not provided for in the general rules and regulations, in any case involving the diversion of five hundred cubic feet of water per second, or more, or in the construction of a dam more than thirty feet high from the foundation. The owners proposing to store or carry water in excess of their needs for beneficial use, may make application for such excess, and shall be held as trustees of such right for the parties, applying the water to a beneficial use; and shall be required to sell water rights for a reasonable price and to furnish the water, for such parties at reasonable rates for storage, or carriage, or both, as the case may be; Provided, that upon the filing in the office of the state engineer of a notice of intention to make formal application for a permit to appropriate certain public waters the state engineer may allow a reasonable time, to be specified by him and noted upon his records, for making the surveys, measurements, maps, plans and specifications hereinbefore provided and required for a formal application, and if applicant shall file such formal application and map, plans and specifications and other necessary data within the time so specified, his priority of application shall date from the time of filing such notice.

Act of Mar. 15, '13; L. '13, C. 62, §2.

What is a reasonable charge for water depends largely on the cost of constructing and operating the irrigation works.

Young et al v. Hinterlider, 15 N. M. 666; 110 Pac. 1045.

This and section 5680 speak entirely of water right to be acquired by filing a petition with the state engineer and do not attempt to deal with any ditches or water rights acquired before the passage of the act.

Pueblo of Isleta v. Tondre, 137 Pac. 86.

Act Does Not Apply to Existing Community Ditches.

Sec. 28. (Sec. 5679, 1915 Code.) That none of the provisions of the preceding section or section 5662, shall apply to community ditches which are already constructed.

Act of Mar. 15, '13; L. '13, C. 62, §3.

Does Not Apply to Use for Stock.

Sec. 29. (Sec. 5730, 1915 Code.) That this act shall not be construed to apply to stockmen, or stock owners who may build or construct water tanks or wells for watering stock.

Act of Mar. 17, '09; L. '09, C. 54, §1.

Cited in *Farmers' Development Co. v. Rayado L. & I. Co.*, 133 Pac. 104.

Sec. 30. (Sec. 2, Chap. 54, Laws 1909.) All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 31. (Sec. 3, Chap. 54, Laws 1909.) This act shall have full force and effect from and after its passage.

Sec. 32. (Sec. 5680, 1915 Code.) The date of receipt of such application in the state engineer's office shall be endorsed thereon and noted in his record. If the application is defective as to form or unsatisfactory as to feasibility or safety of plan, or as to the showing of ability of the applicant to carry the construction to completion, it shall be returned with a statement of the corrections, amendments or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refiling thereof. If refiled, corrected as required within such time, the application shall, upon being accepted, take priority as of date of its original filing, subject to compliance with the further provisions of the law and the regulations thereunder. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling; Provided, That the plans of the construction may be amended, with the approval of the state engineer, at any time; but no such change shall authorize any extension of time for construction beyond five years from the date of the permit, except as provided in section 5693; Provided, further, That a change in the proposed point of diversion of water from a stream shall be subject to the approval of the state engineer, under the provisions of section 5704, and shall not be allowed to the detriment of the rights of others having valid claims to the use of water from said stream.

Act of Mar. 19, '07; L. '07, C. 49, §25.

See Sec. 5771.

See note to Sec. 5678.

A community acequia existing at the time of the passage of this act may change its point of diversion without obtaining the approval of the State Engineer.

Pueblo of Isleta vñ Tondre, 137 Pac. 86.

Cited in *Turley v Furman*, 16 N. M. 253, 114 Pac. 278.

Sec. 33. (Sec. 5681, 1915 Code.) Upon the filing of an application which complies with the provisions of this article and the rules and regulations established thereunder, accompanied by the proper fees, the state engineer shall instruct the applicant to publish notice thereof, in a form prescribed by him, in some newspaper of general circulation in the stream system, once a week for two consecutive weeks. Such notice shall give

all essential facts as to the proposed appropriation; among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of applicant and the time when the application shall be taken up by the state engineer for consideration. Proof of publication, as required, shall be filed with the state engineer within sixty days of his instructions to make publication. In case of failure to file satisfactory proof of publication in accordance with the rules and regulations applicable thereto, within the time required, the application shall thereafter be treated as an original application filed on the date of receipt of proofs of publication in proper form.

Act of Mar. 19, '07; L. '07, C. 49, §26.

Sec. 34. (Sec. 5682, 1915 Code.) Upon the receipt of the proofs of publication, accompanied by the proper fees, the state engineer shall determine from the evidence presented by the parties interested, from such surveys of the water supply as may be available and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, he shall endorse his approval on the application, which shall thereupon become a permit to appropriate water, and shall state in such approval the time within which the construction shall be completed, not exceeding five years from the date of approval, and the time within which the water shall be applied to a beneficial use, not exceeding four years in addition thereto: Provided, That the state engineer may, in his discretion, approve any application for a less amount of water, or may vary the periods of annual use and the permit to appropriate water shall be regarded as limited accordingly.

Act of Mar. 19, '07; L. '07, C. 49, §27.

Cited in *Turley v. Furman*, 16 N. M. 262, 114 Pac. 278, holding a proposed diversion of waters in Colorado for use in New Mexico is not within the jurisdiction of the Territorial Engineer.

Cited in *Farmers Development Co. v. Rayado L. & I. Co.*, 18 N. M., 138, 133 Pac. 104.

Sec. 35. (Sec. 5683, 1915 Code.) If, in the opinion of the state engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules and regulations thereunder. He may also refuse to consider or approve an application or to order the publication of notice thereof, if, in his opinion, the approval thereof would be contrary to the public interest.

Act of Mar. 19, '07; L. '07, C. 49, §28.

To be contrary to public interest a project need not be a menace to public health or safety. A project requiring water in excess of the amount unappropriated in the stream is contrary to public interest.

Young et al. v. Hindelider, 15 N. M. 666, 110 Pac. 1045

Cited in *Turley v. Furman*, 16 N. M. 262, 114 Pac. 278; holding a proposed diversion of water in Colorado for use in New Mexico is not within the jurisdiction of the Territorial Engineer.

Cited in *Farmers Development Co. v. Rayado L. & I. Co.*, 18 N. M., 138, 133 Pac. 104.

Sec. 36. (Sec. 5687, 1915 Code.) The construction of the works shall be diligently prosecuted to completion, and if one-fifth of the work shall not be completed within one-half the time allowed, as determined by the state engineer, he may accept and approve, an application for the use of all or any of the waters included in the permit issued to the prior applicant and the right to use such waters under the former permit shall thereupon be forfeited: Provided, That the state engineer shall allow an extension of time on request of the prior applicant, equal to the time during which work was prevented by the operation of law or other causes, beyond the power of the said applicant to control.

Act of Mar. 19, '07; L. '07, C. 49, §29.

Sec. 37. (Sec. 5688, 1915 Code.) On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the state engineer shall cause the work to be inspected, after due notice to the owner of the permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, their safety and efficiency. If not properly and safely constructed, the state engineer may require the necessary changes to be made within a reasonable time, to be fixed by him, and shall not issue his certificate of completion until such changes are made. If at or before the expiration of said time, good cause is shown why said change could not be made within said time, then additional time may be allowed in which to make said change. Failure to make such changes shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the state engineer, and applications subsequent in time shall have the benefit of such postponement of priority; Provided, That for works involving the diversion of not exceeding twenty cubic feet of water per second or a dam not exceeding ten feet in the extreme height from the foundation, the state engineer may, in his discretion, accept the report of the inspection by a reputable hydraulic engineer.

Act of Mar. 19, '07; L. '07, C. 49, §30.

Sec. 38. (Sec. 5689, 1915 Code.) When the works are found in satisfactory condition, after inspection; the state engineer shall issue his certificate of construction, setting forth the actual capacity of the works and such limitations on the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.

Act of Mar 19, '07; L. '07, C. 49, §31.

Sec. 39. (Sec. 5690, 1915 Code.) If the state engineer, shall, in the course of his duties, find that any works used for the storage, diversion or carriage of water are unsafe and a menace to life or property, he shall at once notify the owner or agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works; and, if not paid by him within thirty days after the decision of the state engineer, shall be a lien against the property of such owner, to be recovered by suit instituted by the district attorney of the county at the request of the state engineer. The state engineer may, when in his opinion necessary, inspect any works under construction for the storage, diversion, or carriage of water, and require any changes necessary to secure their safety; and the fees for such inspections shall be a lien on any property of the owner and shall be subject to collection as provided herein: Provided, That any works constructed by the United States, or by its duly authorized agencies, shall not be subject to such inspection while under the supervision of the officers of the United States.

Act of Mar. 19, '07; L. '07, C. 49, §32.

Cited in *Turley v. Furman*, 16 N. M. 253, 114 Pac. 278, holding a proposed diversion of water in Colorado for use in New Mexico is not within the jurisdiction of the Territorial Engineer.

Sec. 40. (Sec. 5691, 1915 Code.) The use of works for the storage, diversion, or carriage of water, contrary to the instructions of the state engineer, at any time after an inspection thereof by him, and receipt of notice from him that the same are unsafe for the purpose for which they are used, until the receipt of notice from him that in his opinion they have been made safe, shall be a misdemeanor, and it shall be the duty of the state engineer to give prompt notice to the district attorney of the county in which works are located in case of such violation. The district attorney shall at once proceed against the owner, and all parties responsible therefor.

Act of Mar. 19, '07; L. '07, C. 49, §33.

Sec. 41. (Sec. 5692, 1915 Code.) On or before the date set for the application of the water to a beneficial use, the state engineer shall cause the works to be inspected, after due notice to the owner of the permit. Upon the completion of such inspection, the state engineer shall issue a license to appropriate water to the extent and under the condition of the actual application thereof to beneficial use, but in no manner extending the rights described in the permit: Provided, That the inspec-

tion to determine the amount of water applied to beneficial use shall be made at the same time as that of the constructed work, if requested by the owner, and if such action is deemed proper by the state engineer.

Act of Mar. 19, '07; L. '07, C. 49, §34.

State Engineer May Extend Time to Construct Irrigation Works.

Sec. 42. (As amended by L. 1917, Ch. 95.) That Section 5693 of the 1915 codification be and the same hereby is amended so as to read as follows: The state engineer shall have the power to grant extensions of time for completion of construction works under any irrigation, power, mining, milling, placer, municipal or other project or system, for the application of water of beneficial uses: Provided, however, that all such extensions granted either for completion or for the application of water to beneficial use may aggregate five (5) years but shall not aggregate more than five (5) years as to either completion of work or application to beneficial use, and provided, further, that in granting extensions the state engineer shall always have in view the policy of the state to encourage the development of the arid lands within the state, and the extension shall be made and constructed liberally in favor of irrigation projects begun for the purpose of development of lands which are unproductive without irrigation.

Sec. 43. (L. 1915, Ch. 11.) In all cases where the original permit for an irrigation or power project was granted prior to the first day of January, 1912, where it shall be made to appear to the state engineer by affidavit of applicant, or his assignee, and such other proofs as the state engineer may require, that it has been or will be impossible to complete the construction of any irrigation works or system, or power plant or system, or any portion thereof, within the State, within the time allowed by the provisions of chapter 49 of the Session Laws of 1907 (§5693) because of inability to finance such irrigation or power project, the state engineer shall have power to extend the time for completion of such irrigation works or system, or power plant or system, or any portion thereof, for an additional period of not to exceed three years from the first day of January, 1915, under such reasonable terms, conditions and restrictions as may be prescribed by the state engineer, who shall endorse on said permit, and upon the proper records thereof in his office, the time within which the water may be applied to a beneficial use, not exceeding four years from and after the date so fixed for the completion of such irrigation works or system, or such power plant or system; Provided, none of the parts or provisions of this act shall apply

to or be construed to be in force or effect in the counties of San Juan, Lincoln, Valencia and Luna.

Sec. 44. (L. 1917, Ch. 26.) In all cases where the original permit for an irrigation or power project shall have been granted and when it shall be made to appear to the state engineer by the affidavit of the applicant, his or its successors or assigns or by the affidavit of any person for and on behalf of such applicant, and by such other evidence as the state engineer may require, that at least one-fourth of the actual construction work on such irrigation system, or power project, was completed on or before the first day of January, 1917, and that it will be impossible to complete the construction of such irrigation system or power project or the remaining part thereof within the time allowed by the provisions of the laws of this state, because of inability to procure the necessary finances therefor, or on account of any other unavoidable condition, the state engineer shall have and is hereby given the authority to extend the time for completion of such irrigation system or power project, or the remaining part thereof, for an additional period not exceeding three years from and after the first day of January, 1917, upon such reasonable terms and conditions as may be prescribed by the state engineer; and at the time of granting any such extension the state engineer shall endorse on said permit and make a proper record in the records of his office of such extension and of the time within which the water of such irrigation system or power project shall be applied to a beneficial use, which time shall not exceed four years from and after the date fixed in such extension, for the completion of any such irrigation system or power project.

That is is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico, that the provisions of this act become effective at the earliest possible time, and therefore an emergency is hereby declared to exist, and this act shall take effect and be in full force and effect from and after its passage and approval.

Sec. 45. (Sec. 5695, 1915 Code.) Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the state engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed in the office of the state engineer, upon assignment; Provided, That no right to appropriate water, except water for storage, reservoirs, for irrigation purposes shall be assigned, or the ownership thereof in any wise transformed, apart from the land to which it is appurtenant, except in the manner specially provided by law: Provided, further, That the

transfer of title of land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes, unless previously alienated in the manner provided by law.

Act of Mar. 19, '07; L. '07, C. 49, §36.

Sec. 46. (Sec. 5696, 1915 Code.) In any suit concerning water rights, or in any suit or appeal provided for in this article, the court may in its discretion submit any question of fact arising therein to a jury, or may appoint a referee or referees to take testimony and report upon the rights of the parties.

Act of Mar. 19, '07; L. '07, C. 49, §37.

Sec. 47. (Sec. 5697, 1915 Code.) The attorney general and the district attorney of the county in which legal questions arise, shall be the legal advisers of the state engineer, and shall perform any and all legal duties necessary in connection with his work, without other compensation than their salaries as fixed by law, except when otherwise provided.

Act of Mar. 19, '07; L. '07, C. 49, §38.

Sec. 48. (Sec. 5698, 1915 Code.) The owner or owners of any works for the storage, diversion, or carriage of water, which contain water in excess of their needs for irrigation or other beneficial use for which it has been appropriated, shall be required to deliver such surplus at uniform rates to parties entitled to use the same under like conditions and circumstances.

Act of Mar. 19, '07; L. '07, C. 49, §39.

Sec. 49. (Sec. 5699, 1915 Code.) Whenever the proper officers of the United States, authorized by law to construct works for the utilization of waters within the state, shall notify the state engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice, shall not be subject to a further appropriation under the laws of the state for a period three years from the date of said notice, within which time the proper officers of the United States shall file plans for the proposed work in the office of the state engineer for his information, and no adverse claims to the use of water required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the state, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States, thereunto duly authorized: Provided, That in case of failure to file plans of the proposed work within three years, as herein required, the waters specified in the notice given by the United States to the state

engineer shall become public waters subject to general appropriations.

Act of Mar 19, '07; L. '07, C. 49, §40.

This section is merely declaratory of the law as it had already been established in New Mexico by repeated judicial decisions.

Hagerman Irrigation Co. v. McMurray, 16 N. M. 179, 113 Pac. 823.

Sec. 50. (Sec. 5700, 1915 Code.) The standard of measurement of the flow of water shall be the cubic foot per second of time; the standard of measurement of the volume of water shall be the acre foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred and sixty cubic feet. The miner's inch shall be regarded as one-fiftieth of a cubic foot per second in all cases, except when some other equivalent of the cubic foot per second has been specifically stated by contract, or has been established by actual measurement or use.

Act of Mar. 19, '07; L. '07, C. 49, §41

Sec. 51. (5701, 1915 Code.) When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, except the water for storage reservoirs, for a period of four years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

Act of Mar. 19, '07; L. '07, C. 49, §42.

This section is merely declaratory of the law as it had already been established in this jurisdiction by repeated judicial decisions, except that by those decisions the time within which the application must be made was not any definite period but a reasonable time, depending to some extent on the circumstances of the particular case.

Hagerman Irrigation Co. v. McMurray, 16 N. M. 179, 113 Pac. 823.

Sec. 52. (Sec. 5702, 1915 Code.) In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount allowed shall not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land.

Act of Mar 19, '07; L. '07, C. 49, §43.

Sec. 53. (Sec. 5703, 1915 Code.) All water used in this state for irrigation purposes, except as otherwise provided in this article, shall be considered appurtenant to the land upon which it is used, and the right to use the same upon said land shall never be severed from the land without the consent of the owner of the land; but by and with the consent of the owner of the land, all or any part of said right may be severed from said land, and simultaneously transferred and become appurtenant to other land or may be transferred for other purposes, without losing priority of right theretofore established, if such changes can be made without detriment to existing rights, on the approval of an application of the owner to the state engi-

neer. Before the approval of such application, the applicant must give notice thereof by publication, in the form required by the state engineer, once a week for four consecutive weeks in a newspaper of general circulation in the stream system in which the tract or tracts of land may be situated.

Act of Mar. 19, '07; L. '07, C. 49, §44.

See Sec. 5654.

This section is only a recognition of the law relative to waters used for irrigation as established by general custom. Where land is owned in severalty the water right appurtenant to it is also owned in severalty.

Snow v. Abalos et al., 140 Pac. 1044.

Sec. 54. (Sec. 5704, 1915 Code.) An appropriator of water may use the same for other than the purpose for which it was appropriated, or may change the place of diversion, storage, or use, in the manner, and under the conditions, prescribed in sections 5680 and 5703.

Act of Mar. 19, '07; L. '07, C. 49, §45.

See Sec. 5771.

Sec. 55. (Sec. 5705, 1915 Code.) Every ditch owner shall when requested to do so by the state engineer, construct and maintain a substantial headgate at the point where the water is diverted, and shall construct a measuring device, of a design approved by the state engineer, at the most practicable point or points for measuring, and apportioning the water as determined by the state engineer. The state engineer may order the construction of such device by the ditch owner, and if not completed within twenty days thereafter, refuse to deliver water to such owner. The taking of the water by such ditch owner, after refusal by the state engineer to deliver water to him, until the construction of such device and the approval thereof by the state engineer, shall be a misdemeanor. Such devices shall be so arranged that they can be locked in place, and when locked by the state engineer or his authorized agent, for the measurement or apportionment of water, it shall be a misdemeanor for any unauthorized person to interfere with, disturb or change the same.

Act of Mar. 19, '07; L. '07, C. 49, §46.

Cited in *Turley v. Furman*, 16 N. M. 253, 114 Pac. 278, holding proposed diversion of waters in Colorado for use in New Mexico, not within jurisdiction of Territorial Engineer.

As to whether this section affects existing water rights, see *Pueblo of Isleta v. Tondre*, 137 Pac. 86, holding that the act of which this section is a part does not apply to community ditches.

Sec. 56. (Sec. 5706, 1915 Code.) Any person, association or corporation interfering with or injuring or destroying any dam, headgate, weir, benchmark or other appliance for the diversion, carriage, storage, apportionment, or measurement of water, or for any hydrographic surveys, or who shall interfere with any person or persons engaged in the discharge of duties connected therewith, shall be guilty of a misdemeanor, and shall also be liable for the injury or damage resulting from such unlawful act. The state engineer or any authorized as-

sistant shall have power to arrest any person offending against the provisions of this section, and deliver him to the nearest peace officer of the county. It shall be the duty of the person making the arrest to make complaint at once before the court having jurisdiction thereof. The state engineer, the water masters, and their authorized assistants, and agents may enter upon private property for the performance of their respective duties, doing no unnecessary injury thereto.

Act of Mar. 19, '07; L. '07, C. 49, §47.

For penalty see Sec. 5710.

Cited in *Turley v. Furman*, 16 N. M. 253, 114 Pac. 278, holding a proposed diversion of waters in Colorado for uses in New Mexico is not within jurisdiction of Territorial Engineer.

Sec. 57. (Sec. 5707, 1915 Code.) The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, or the public shall be a misdemeanor. It shall also be a misdemeanor to begin to carry on any construction of works for storing or carrying water until after the issuance of permit to appropriate such waters, except in the case of construction carried on under authority of the United States.

Act of Mar. 19, '07; L. '07, C. 49, §48.

Sec. 58. (Sec. 5708, 1915 Code.) The owner or owners of any ditch, canal, or other structure for carrying or storing water, shall construct a substantial bridge where the same crosses any public road with a passageway not less than fourteen feet wide; or reconstruct the road in a substantial manner and in a convenient location for public travel. Any violation of the provisions of this section shall be a misdemeanor. The county commissioners shall be authorized to construct such bridge or road, if not built by the owner of the work within three days after the obstruction of the road, and may recover the expense thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The county commissioners may make reasonable requirements as to the size and character of such bridges along public highways; or for the necessary reconstruction of roads, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the county commissioners. The owner or owners of any ditch, canal or other structure for carrying or storing water shall keep the same in good repair at the crossing of any highway or publicly traveled road or at other places where the water therefrom may flow over or in any wise injure any road or highway; and the commissioners shall require necessary repairs for the protection of the roads to be made or shall make

them at the expense of the owners of such works and collect the expense thereof, and costs as herein provided.

Act of Mar. 19, '07; L. '07, C. 49, §49.

Sec. 59. (Sec. 5709, 1915, Code.) Whenever any appropriator of water has the right-of-way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto. Any violations of this section shall be a misdemeanor.

Act of Mar. 19, '07; L. '07, C. 49, §50.

For penalty see Sec. 5710.

Cited in *Turley v. Furman*, 16 N. M. 253, 114 Pac. 278, holding a proposed diversion of water in Colorado for use in New Mexico is not within jurisdiction of Territorial Engineer.

Sec. 60. (Sec. 5710, 1915 Code.) All violations of the provisions of this article, declared herein to be misdemeanors, shall be punished by a fine not exceeding one hundred dollars (\$100.00) nor less than ten dollars (\$10.00), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, and any justice court of the county in which such misdemeanor has been committed shall have jurisdiction thereof.

Act of Mar. 19, '07; L. '07, C. 49, § 51.

Sec. 61. (Sec. 5711, 1915 Code.) All liens on land, provided for in this article shall be superior in right to all mortgages or other incumbrances placed upon the land and the water appurtenant thereto or used in connection therewith.

Act of Mar. 19, '07; L. '07, C. 49, §52

Sec. 62. (Sec. 5712, 1915 Code.) In the case of the seepage of water from any constructed works, the owner of such works shall have the first right to the use thereof upon filing an application with the state engineer as in the case of an original appropriation, but if such owner shall not file said application within one year after the completion of such works, or the appearance upon the surface of such seepage water, any party desiring to use the same shall make application to the state engineer, as in the case of unappropriated water, and such party shall pay to the owner of such works reasonable charge for the storage or carriage of such water in such works: Provided, That the appearance of such seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such works.

Act of Mar. 19, '07; L. '07, C. 49, §53.

Under the above section the only seepage water over which the engineer has power to grant permits for appropriation by applicants is seepage water from "constructed works". The term "constructive works" is used in many of the sections of the act of 1907, and, as was held by the board of water commissioners, in its opinion overruling the territorial engineer, refers to constructed reservoirs and ditches. There being no proof of any such constructed works, or proof that the seepage water came from such works, the engineer was without authority under that section to grant permits for its appropriation by the appellant; and this is true regardless of whether

the owner of the land upon which the water appeared applied for its appropriation or not.

Vanderwork v. Hewes, 15 N. M. 439; 110 Pac. 567

Sec. 63. (Sec. 5713, 1915 Code.) No lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States, and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except upon the condition prescribed in this section. Any state lands needed by the United States for irrigation works shall be conveyed to the United States without charge.

Act of Mar. 19, '07; L. '07, C. 49, §55.

Sec. 64. (Sec. 5714, 1915 Code.) There is appropriated out of any moneys in the state treasury, except the fund for the payment of interest on the bonded debt, and exclusive of the Hydrographic Survey Fund, section 5676, the sum of \$3,500.00 annually, or so much thereof as may be necessary, for the payment of the salaries and expenses of the state engineer, and the services of assistants and expenses of the office and department of the state engineer, as provided by this article. All claims for services rendered and expenses incurred and materials and supplies furnished under the provisions of this article shall be audited by the state auditor for payment and be paid by the state treasurer in accordance with the provisions of the general statutes as to the auditing of claims against the state.

Act of Mar. 19, '07; L. '07, C. 49, §56.

Sec. 65. (Sec. 5715, 1915 Code.) In all cases where local or community customs, rules and regulations have been adopted and are now in force and in all cases where such rules and regulations may be adopted from time to time by the majority of the users from a common canal, lateral, or irrigation system, and have for their object the economical use of water and are not detrimental to the public welfare, such rules and regulations shall govern the distribution of water from such ditches, laterals and irrigation systems to the persons entitled to water therefrom, and such customs, rules and regulations shall not be molested or changed, unless so desired by the persons interested and using said custom or customs, but nothing in this section shall be taken to impair the authority of the state

engineer and water master to regulate the distribution of water from the various stream systems of the state to the ditches and irrigation systems entitled to water therefrom under the provisions of this article.

Act of Mar. 19, '07; L. '07, C. 49, §57.

Referred to in *Pueblo of Isleta v. Tondre*, 137 Pac. 86; note to Sec. 5665.

Sec. 66. (Sec. 5716, 1915 Code.) No water master shall be appointed under this article, until the prior rights to the use of water have been determined in one or more stream systems in this state under the provisions of this article.

Act of Mar. 19, '07; L. '07, C. 49, §58.

Referred to in *Pueblo of Isleta v. Tondre*, 137 Pac. 86; note to Sec. 5665.

Sec. 67. (Sec. 5717, 1915 Code.) Nothing contained in this article shall be construed to impair existing, vested rights or the rights and priorities of any person, firm, corporation or association, who may have commenced the construction of reservoirs, canals, pipe line or other works or who have filed affidavits, applications or notices thereof for the purpose of appropriating for beneficial use, any waters as defined in section 5654, in accordance with the laws of the Territory of New Mexico, prior to March 19, 1907; Provided, however, That all such reservoirs, canals, pipe lines or other works and the rights of the owners thereof shall be subject to regulation, adjudication and forfeiture for abandonment as provided in this article.

Act of Mar. 19, '07; L. '07, C. 49, §59.

The class of works referred to in this section is that concerning which application is required to be made to the State Engineer, and it does not refer to small community ditches or acequias which involve no damage to life or property and one of comparatively insignificant cost.

Pueblo of Isleta v. Tondre, 137 Pac. 86.

Sec. 68. (Sec. 5718, 1915 Code.) Whenever the owner of a ditch, canal, pipe line, reservoir, or other works shall turn or deliver water from one stream or drainage into another stream or drainage, such owner may take and use the same quantity of water, less a reasonable deduction for evaporation and seepage to be determined by the state engineer, and such owner may be required by the state engineer to construct and maintain suitable measuring flumes or devices at the point or points where said water leaves its natural stream or water shed, or is turned into another stream or water shed. Where the rights of others are not injured thereby, it shall be lawful for the owner of any reservoir, canal, or other work, to deliver water into any ditch, stream, or water course, to supply appropriations therefrom and to take in exchange therefor, either above or below such point of delivery, a quantity of water equivalent to that so delivered, less a proper deduction for evaporation and seepage to be determined by the state engineer; Provided, such owner shall, under the direction of the state engi-

neer, construct and maintain suitable measuring devices at the points of delivery and diversion.

Act of Mar. 19, '07; L. '07, C. 49, §60
See Sec. 5729.

Sec. 69. (Sec. 5719, 1915 Code.) Whenever in accordance with the provisions of this article, any person, firm, association, or corporation shall enlarge an existing canal, acequia, reservoir, or other works in order to use the same in common with former owner, such person, firm, association or corporation, shall have and enjoy the right to use and benefit of the quantity of water added to the capacity of such structure or work by such enlargement. Where two or more owners are using or have the right to use the same canal, acequia, reservoir or other water works, and one or more of such owners shall fail or neglect to do his or their proper share of the work or to furnish and pay for his or their proper share of the materials necessary for the maintenance, repair and operation thereof, any one of more of such owners may, after ten days notice, proceed to perform such work, and furnish such materials, and may recover from each delinquent owner his proportionate share of the cost of such work and materials by a suit in any court of competent jurisdiction, and shall have a lien therefor upon such delinquent owner's share in said canal, acequia, reservoir or other works enforceable in the same manner as provided by law for the enforcement of mechanic's liens.

Act of Mar. 19, '07; L. '07, C. 49, §61.
See note to Sec. 5656

Sec. 70. (Sec. 5720, 1915 Code.) There shall be a board of water commissioners to consist of three members who shall be appointed by the Governor of the State of New Mexico, by and with the advice and consent of the Senate from different sections of the state, and who shall hold office for four years, or until their successors shall be appointed and qualified. Each member of such board before assuming the duties of his office shall take the oath as prescribed by law for state officials, conditioned upon the faithful discharge of his duties. Such board shall, if there be pending before it business so requiring, meet at the office of the state engineer on the first Monday of May, August, November and February of each year, and shall hold special meetings whenever called by a majority of the board, either at the state capital or elsewhere as the business of the board may require.

Act of Mar. 19, '07; L. '07, C. 49, §62.
For oath see Constitution, Art. XX, §1.

Sec. 71. (Sec. 5721, 1915 Code.) It shall be the duty of said board to hear and determine appeals from the actions and decisions of the state engineer in all matters affecting the

rights, priorities and interests of water users and owners of, or parties desiring to construct canals, reservoirs, or other works for the conveyance, storage or appropriation of waters in this state. Any applicant or other party dissatisfied with any decision, act or refusal to act of the state engineer may take an appeal to said board: Provided, Notice of such appeal shall be served upon the state engineer and all parties interested within thirty days after notice of such decision, act or refusal to act, and unless such appeal is taken within said time, the action of the state engineer shall be final and conclusive. Notice of such appeal may be served in the same manner as summons in actions brought before the district courts of the state, or by publication in some newspaper printed in the county or water district wherein the work or point of desired appropriation in question is situated, once a week for four consecutive weeks, the last publication to be at least twenty days prior to the date when such appeal may be heard.

Act of Mar. 19, '07; L. '07, C. 49, §63.

Cited in *Turley v. Furman*, 16 N. M. 253, 114 Pac 278, holding a proposed diversion of water in Colorado for use in New Mexico is not within jurisdiction of Territorial Engineer.

The act in question, clearly shows that in each instance, where a hearing is provided for, or required, the same shall be de novo, or an original hearing, where the engineer, board of water commissioners, or the court hears such competent proof as may be offered by the parties interested in the proceeding, and forms his or its own independent judgment relative to the issues involved. The board of water commissioners does not, nor is it called upon to review the discretion of the engineer. Upon appeal, it determines for itself the question as to whether the application should be approved or rejected. It is not bound, controlled, or necessarily influenced, in any way by the action of the engineer. It hears, or may hear additional evidence, and upon the record, and such evidence as is properly before it, decides the question presented.

Farmers' Development Co. v. Rayado Land & Irrigation Co., 133 Pac. 104.

Sec. 72. (Sec. 5722, 1915 Code.) It shall be the duty of the state engineer, upon notice being filed in his office of such appeal, to forthwith transmit, or produce, before said board the papers, maps, plats, field notes and other data in his possession, affecting the matter in controversy, or certified copies thereof, which copies shall be admitted in evidence by said board, or by any court in this state, as of equal validity with the originals.

Act of Mar. 19, '07; L. '07, C. 49, §64.

Sec. 73. (Sec. 5723, 1915 Code.) The decisions of said board, upon any such appeal, shall be filed in the office of the state engineer, who shall thereafter act in accordance with such decision. The decision of said board shall be final, subject to appeal to the district court of the district wherein such work, or point of desired appropriation, is situated, to be taken within sixty days from the date of such decision, upon notice served in the manner and within the time in this article provided for service of notice of appeal from decisions or acts of the state engineer, and upon filing a cost bond in such sum as the board may fix, with two or more sureties to be

approved by the clerk of said board. If for any good reason said board should fail to meet and act upon any such appeal within ninety days after the filing of notice thereof with the clerk of said board, the case may be taken before the district court of the district wherein the work done or point of desired appropriation in controversy is situated, upon petition and by writ of certiorari directed to said board and served upon the clerk thereof; Provided, That notice of the filing of such petition and the application for said writ shall be served upon all parties interested, in the manner herein provided for service of notice of appeals to said board.

Act of Mar. 19, '07; L. '07, C. 49, §65.

Cited in *Farmers' Development Co. v. Rayado L. & I. Co.*, 133 Pac. 104

Sec. 74. (Sec. 5724, 1915 Code.) In case of such appeal to the district court it shall be the duty of said board to certify to said court the record of all proceedings with reference to the matter in controversy together with all papers, maps, plats, field notes, and other documents and exhibits filed with said board. The costs in such cases to be taxed the same as costs in cases in the district court and at the same rates and that the same shall be paid in accordance with the judgment of the board or court in each case. All cases removed into the district court in pursuance of this section shall be tried de novo, except that evidence which may have been taken in the hearing before the state engineer and said board and transcribed, may be considered as original evidence in the district court, and the court shall allow all amendments which may be necessary in furtherance of justice in all cases, appealed by petition or certiorari, or otherwise, and may submit any question of fact arising therein to a jury, or to one or more referees at its discretion.

Act of Mar. 19, '07; L. '07, C. 49, §66.

The court may consider such evidence as has been introduced before the board and engineer, and transcribed and filed with it; but it also hears additional evidence, and is not called upon to determine whether the engineer or the board of water commissioners erred in the action taken and order entered, but must form its own conclusion and enter such judgment as the proof warrants and the law requires. It does not review the discretion of the engineer or the board, but determines, as in this case it was required by the issue presented, whether appellee's application to appropriate water should be granted. The court, in order to form a conclusion upon the issues, was necessarily required to determine, for itself, whether there was unappropriated water available, whether the approval of the application would be contrary to the public interest, and all other questions which the engineer was required, in the first instance, to determine.

Farmers' Development Co. v. Rayado Land & Irr. Co., 133 Pac. 104.

Sec. 75. (Sec. 5725, 1915 Code.) Said board may adopt and use a seal and make rules for the hearing and determination of appeals not inconsistent with law and the provisions of this article. Any member of said board or the clerk thereof, or any referee appointed by said board to take testimony may administer oaths to witnesses; and the board or any such referee shall have the power to order or summon witnesses

to appear and testify before it or such referee, and to produce books, papers and documents. Any person, or the officer or agent of any corporation who shall fail or refuse to appear and testify or to produce the papers and documents as required by any summons or order of said board or referee appointed by said board to take testimony, shall be guilty of a misdemeanor and upon conviction thereof before any district court of this state, shall be fined in a sum not less than fifty nor exceeding one hundred dollars, or by imprisonment in the county jail not to exceed three months, or by both such fine and imprisonment, in the discretion of the court.

Act of Mar. 19, '07; L. '07, C. 49, §67.

Sec. 76. (Sec. 5726, 1915 Code.) Each member of said board shall receive five dollars per day while in attendance at meeting thereof, and actual traveling expenses while in the discharge of his duties; Provided, That no member shall receive pay for more than sixty days' service in any one year.

Act of Mar. 19, '07; L. '07, C. 49, §68.

Sec. 77. (Sec. 5727, 1915 Code.) The board shall appoint a clerk, who may be also a clerk or assistant to any other state officer, and who shall receive a salary not to exceed fifty dollars per month for his services as clerk to said board. The board may purchase necessary stationery and office supplies to an amount not to exceed one hundred dollars in any one year. The salary of the clerk, the per diem of the members of the board and the expenses of the members and office as herein provided, shall be paid at the time and in the same manner as those of other officers of the state.

Act of Mar. 19, '07; L. '07, C. 49, §69.

Sec. 78. (Sec. 5728, 1915 Code.) All permits, decrees and documents granting, defining or limiting water rights and rights of owners of canals, reservoirs and works for conducting, storing or appropriating water in this state shall be recorded in the office of the county clerk of the county in which the property, canal, reservoir or work is situated. When so recorded, copies of such permits, decrees and documents certified by the county clerk shall be admitted in evidence in any court of the state as of equal validity with the original.

Act of Mar. 19, '07; L. '07, C. 49, §71.

Sec. 79. (Sec. 5729, 1915 Code.) It shall be unlawful for any person, company, or corporation, to divert the waters of any public stream in New Mexico for use for reservoirs or other purposes in a valley other than that of any such stream, to the impairment of valid and subsisting prior appropriations of such waters.

Any violator of this section, shall upon conviction be punished by a fine of not less than one hundred dollars (\$100.00)

nor more than five hundred dollars(\$500.00) or imprisonment in the county jail for not less than one month nor more than three months, or both, in the discretion of the court.

Act of Mar. 19, '07; L. '07, C. 49, §72.
See Sec. 5718.

Sec. 80. (Sec. 73, Chap. 49, Laws 1907.) An act of the 36th Legislative Assembly of the Territory of New Mexico, entitled "An Act creating the office of Territorial Irrigation Engineer, to promote irrigation development and conserve the waters of New Mexico for the irrigation of lands and for other purposes," approved March 16, 1905, and all other acts and parts of acts in conflict with this act, are hereby repealed, and this act shall be in full force and effect from and after its passage.

Sec. 81. (Sec. 5684, 1915 Code.) To the end that the waters of the several stream systems of the state may be conserved and utilized so as to prevent erosion, waste and damage caused by torrential floods, and in order that the benefits of the use of such waters may be distributed among the inhabitants and land owners of the country along said streams as equitably as possible without interfering with vested rights the natural right of the people living in the upper valleys of the several stream systems to impound and utilize a reasonable share of the waters which are precipitated upon and have their source in such valleys and superadjacent mountains, is hereby recognized, the exercise of such right, however, to be subject to the provisions of this article.

Act of Mar. 18, '09; L. '09, C. 128, §1.

Sec. 82. (Sec. 5685, 1915 Code.) In cases of applications for permits to impound and utilize waters of any stream of flood waters under conditions which would cause or permit a considerable return flow of such waters into their natural channel above the diversion or storage works of other appropriators or of others using, or who have acquired the right to use, water from said stream or stream system, the state engineer is authorized to approve such applications whenever such storage or use of water by the upper owner or owners would not result in depriving such lower users or appropriators of water to the extent of their reasonable requirements.

Act of Mar. 18, '09; L. '09, C. 128, §2

Sec. 83. (Sec. 5686, 1915 Code.) There shall be the same right of appeal from the action of the state engineer in approving or rejecting any such application as is provided in this article, Sec. 5721, and nothing in this article shall be construed to impair prior vested rights or the rights of prior appropriators of public waters of this state, or the rights of those who have filed, or may file applications to appropriate public

waters in compliance with existing laws of the state of New Mexico.

Act of Mar. 18, '09; L. '09, C. 128, §3.

Sec. 84. (Sec. 4, Chap. 128, Laws 1909.) This act shall take effect and be in force from and after its passage.

Sec. 85. (Sec. 5694, 1915 Code.) Any person, firm or corporation claiming any rights or priorities to the use of water for any beneficial purpose or purposes in the state of New Mexico, initiated prior to the approval of an act, entitled "An Act to Conserve and Regulate the Use and Distribution of the Waters of New Mexico; to Create the Office of Territorial Engineer; to Create a Board of Water Commissioners and for Other Purposes," approved March 19, 1907, the same being Chapter 49 of the Acts of the 37th Legislative Assembly of New Mexico (Sec. 5654 et seq.), who had prior to said March 19, 1907, filed the sworn statement required of Section 493 of the Compiled Laws of 1897, and whose work of perfecting said rights or priorities was in progress by excavations, surveys or construction, prior to March 19, 1907, and who had also prior to said date, acquired by purchase the rights of any person or corporation that had expended more than forty thousand dollars in necessary surveys and construction of irrigation works within the same drainage area, shall have a reasonable time as determined by the state engineer within which to complete all necessary surveys, maps, plans, drawing and specification and after the approval thereof by the state engineer shall have the benefit of the extensions of time provided for in this article, in which to complete construction and apply the water to a beneficial use.

Act of Mar. 18, '9; L. '09, C. 130, §1.

Sec. 86. (Sec. 2, Chap. 130, Laws 1909.) This act shall take effect from and after its passage.

Sec. 87. (Sec. 1, Chap. 20, Laws 1919.) Whenever a majority of the resident freeholders owning more than one-half of the lands or the evidence of title to lands so owned in any district in the State of New Mexico, desire to provide for the irrigation of the same in co-operation with the United States under the federal reclamation law, or other federal laws, for the purpose of the construction of irrigation works, including drainage works, necessary to maintain the irrigability of lands within any such district, or for the purchase, extension, operation or maintenance of constructed works, or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, they may propose the organization of an irrigation district under the provisions of this act. When so organized, each district shall have the powers

conferred by law, or that may be conferred by law, upon each irrigation district. Resident entrymen upon public lands of the United States, who are qualified electors, shall be considered as resident freeholders for the purposes of this act, and shall be qualified petitioners for the organization of an irrigation district, and shall share all privileges and obligations of private land owners within the district subject to the terms of the Act of Congress approved August 11, 1916, entitled "An Act to Promote the Reclamation of Arid Lands." Provided, that where ditches, canals or reservoirs have been constructed before March 18, 1909, such ditches, canals, reservoirs and franchises and the lands irrigated therefrom shall be exempt from the operations of this act; except such district be formed to purchase, acquire, lease or rent such ditches, canals; reservoirs and their franchises; or unless a statement signed by at least four-fifths in number of the owners of any such ditch, canal, or reservoir and of the franchise and water rights thereof and the lands irrigated therefrom be filed with the Board or Boards of County Commissioners of the county or counties in which such ditch, canal, reservoir and lands are situate, giving their consent that such ditch, canal, reservoir; franchise, water rights and lands may be included in one or more irrigation districts, organized or to be organized under the provisions of this act.

Districts organized under this act shall have the following incidental powers: To take over the assets and assume the liabilities of water users' associations organized for co-operation with the United States under the provisions of the Act of Congress approved June 17, 1902, (32 Stat., 388) and acts amendatory thereof, in case a majority of the lands of each association shall be within such district, subject to the provision that the shareholders of such association shall by vote, as provided by their articles of incorporation and by-laws, assent and agree that such assets and liabilities shall be so taken over; to construct, operate, lease and control plants for the generation, distribution, sale and lease of electrical energy, including the sale to municipalities, corporations, firms or individuals of the electrical energy so generated; to promote the agricultural resources and marketing facilities of the district, and to make any appropriation of money, or to take any and all other action necessary to effectuate the purposes here enumerated.

Sec. 88. (Sec. 2, Chap. 20, Laws 1919.) Nothing in the preceding section shall be construed to in any manner affect the rights of water users under community ditches in towns or villages in this State as to their voting power in determining whether any such ditch shall be included in an irrigation district, and each of said water users shall have the same right

and voice in determining such question and in the signing of the statement provided for in section 1 as he has in the control and management of such ditch.

Sec. 89. (Sec. 3, Chap. 20, Laws 1919.) For the purpose of the establishment of an irrigation district as provided by this Act, a petition shall be filed with the Board of County Commissioners of the county which embraces the largest acreage of the proposed district; said petition shall state that it is the purpose of petitioners to organize an irrigation district, under the provisions of this Act; said petition shall also contain a general description of the boundaries of such proposed district, the means proposed to supply water for the irrigation of the lands embraced therein, the name proposed for such district and shall select a committee of three of said petitioners to present such petition to the Board of County Commissioners as provided by law, praying that the said board define and establish the boundaries of said proposed district and submit the question of the final organization of the same to the vote of the qualified electors resident within said proposed district; said petition shall be signed by a majority of the resident freeholders within said proposed district, and who shall also be the owners in the aggregate of the majority of the whole number of acres belonging to the resident freeholders within the said proposed district. The said petition shall also be accompanied by a good and sufficient bond, to be approved by said Board of County Commissioners in double the amount of the probable cost of organizing such district, conditioned for the payment of all costs incurred in said proceedings in case said organization shall not be effected, but in case such organization is so effected, then said expenses incurred by the Board of County Commissioners shall be paid back to said county by said district. Such petition shall be published once each week for four successive weeks in some newspaper of general circulation printed and published in each county wherein shall be situate any lands proposed to be embraced in any such district, together with a notice signed by the committee of said petitioners designated in the petition for that purpose, giving the time and place of presentation of the same to the said Board of County Commissioners.

Sec. 90. (Sec. 4, Chap. 20, Laws 1919.) All publications required by this Act shall be made both in English and Spanish and in every instance the last publication shall be made not less than three days before the time fixed by such publication for the taking of the action therein mentioned.

Sec. 91. (Sec. 5, Chap. 20, Laws 1919.) When such petition is presented and it shall appear that the notice of the presentation of said petition has been given as required by law, and that said petition has been signed by the requisite number of

petitioners as required by this Act, the commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such application for the exclusion of lands therefrom and the inclusion of lands therein as may be made in accordance with the intent of this Act; they may adjourn such examination from time to time not exceeding three weeks in all and shall by final order duly entered define and establish the boundaries of such proposed district; provided, that the said board shall not modify such proposed boundaries described in the petition so as to change the objects of said petition or so as to exempt from the operation of this Act any land within the boundaries proposed by the petition susceptible to irrigation by the same system of water works applicable to other lands in such proposed district; nor shall any land which will not in the judgment of the board be benefited by such proposed water system be included in such district if the owner or entryman thereof shall make application at such hearing to withdraw the same; provided, also, that the contiguous lands not included in said proposed district as described in the petition may upon application of the owner or owners be included in such district upon such hearing, in the event that it shall be determined that the water supply for such additional lands is available and that in other respects it is feasible for the lands of the petitioners to be included within such district.

When the boundaries of any proposed district shall have been examined and defined as aforesaid the County Commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries and designating the name of such proposed district. Thereupon the said commissioners shall by further order duly entered upon their record call an election of the qualified electors of said district to be held for the purpose of determining whether such district shall be organized under the conditions of this Act, and by such order shall submit the names of one or more persons from each of the divisions of said district as hereinafter provided to be voted for as directors therein and for the purpose of said election shall divide said district into divisions, in number as hereinafter designated, as nearly equal in size as may be practical and shall provide that one qualified elector of each of said divisions shall be elected as a member of the board of directors of said district by the qualified electors of the whole district. The Board of County Commissioners shall establish and define a convenient number of election precincts and designate polling places, subject to amendment by the Board of Directors for subsequent elections; and three judges shall be appointed for each of said precincts, one of whom

shall act as clerk of said election; provided, that in the hearing of any such petition the Board of County Commissioners shall disregard any informality therein, and in case they deny the same or dismiss it for any reason on account of the provisions of this Act not having been complied with, which are the only reasons upon which they shall have a right to refuse or dismiss the same, they shall state their reasons in writing therefor in detail, which shall be entered upon their records and in case these reasons are not well founded, a writ of mandamus shall, upon proper application therefor, issue out of the District Court of said county, compelling them to act in compliance with this Act, which writ shall be heard within twenty days from the date of its issuance. The officers of such district shall consist of the directors, a secretary and a treasurer. The directors and divisions of irrigation districts shall be in number, for districts having an irrigable area of twenty-five thousand acres or less, three; for districts having an irrigable area of more than twenty-five thousand acres and not more than fifty thousand acres, five; for districts having an irrigable area of more than fifty thousand acres and less than seventy-five thousand acres, seven; and for districts having an irrigable area of seventy-five thousand acres or more, nine directors and divisions.

Sec. 92. (Sec. 6, Chap. 20, Laws 1919.) The Board of County Commissioners shall thereupon cause notice embodying said orders in substance signed by the chairman of the Board of County Commissioners and the clerk of said board to be issued, given and published, giving public notice of such election, the time and place thereof and of the matters submitted to the vote of the electors; said notice and order shall be published once each week for four successive weeks prior to such election in a newspaper of general circulation in such county, wherein shall be situate any lands proposed to be embraced in any such district. At said election or elections held under the provisions of this act the following persons shall be deemed qualified electors and none others.

(a) All resident freeholders over the age of twenty-one years who are owners of land within the district or of evidence of title to such lands and who are citizens of the United States.

(b) All resident entrymen of public lands within such district over the age of twenty-one years and who are citizens of the United States.

Provided, in so far as applicable the general election laws of the state, except requirements for registration, and except as in this act otherwise provided, shall govern all elections under this act. The ballots to be used and cast at such election

for the formation of such district shall be substantially as follows: "Irrigation District....., Yes," and Irrigation, No," or words equivalent thereto; each elector may vote for one director from each division and shall indicate his vote by placing a marginal cross upon the ballot for or against any question submitted and opposite thereto at any election held under this act. At the election for the formation of any irrigation district and at any other election for directors at which other questions are simultaneously submitted separate ballots for the election of directors shall be used. In such event such separate ballots for the election of directors shall be substantially as follows:

"FOR DIRECTORS FOR.....DISTRICT"

(Inserting name of district)

"For Director from Division No. 1.

"

(The name of the person voted for to be inserted by the voter.)

"For Director from Division No. 2

"

(The name of the person voted for to be inserted by the voter.)

and serially thereafter to the number of directors to be chosen. At all elections for directors the persons receiving a plurality of the votes cast by the qualified electors, for directors from the several divisions respectively, shall be declared elected. At any election held for the formation of an irrigation district under the provisions of this act or at any election held by any such district after its formation for the purpose of voting upon a proposition to issue bonds, or to enter into any contract creating any indebtedness in an amount equivalent in the aggregate to more than twenty-five cents per acre upon all district lands, or to create any indebtedness in excess of such amount, no such district shall be formed and no such proposition shall be deemed to be authorized or approved unless there shall be cast in favor thereof a majority of the votes of the resident freeholders within the district who are the owners in the aggregate of a majority of the whole number of acres belonging to the resident freeholders within said district or the evidence of title to which is held by such resident freeholders,—including resident entrymen on public lands within such districts, who are qualified electors as by this act defined. At any election for the formation of an irrigation district or for the purpose of voting upon a proposition involving the issuance of bonds, or the contracting or creating of an indebtedness in excess of the amount last hereinabove prescribed voting by mail shall be permissible. Any qualified elector as defined by this section desiring to vote by

mail may do so by preparing his ballot in the manner prescribed by this act, affixing his signature thereto and mailing the same in a sealed envelope postpaid to the secretary of the district, or he may deliver or cause to be delivered such envelope containing his ballot to such secretary. Such ballots may be thus prepared, signed and mailed or delivered as aforesaid at any time after the commencement of the publication of notice of any such election and shall be so mailed and delivered prior to the time fixed by law for the closing of the polls. All such ballots shall be safely kept by the secretary of the district until the time prescribed by law for the canvassing of the returns of such elections, when they shall be delivered to the canvassing board by whom they shall be counted in like manner and at the same time as votes cast at the polling places designated for any such election. At the time of delivery of such ballots to the canvassing board the secretary shall make and subscribe to an affidavit setting forth the number of ballots so received, that same were duly received within the time herein fixed, that same are all of the ballots so received and that they are in the same condition as when received.

Thirty days prior to any election under this act the Board of Directors shall cause to be printed a sufficient number of ballots for the purpose of any such election, and within five days prior to any such election shall cause a sufficient number of such ballots to be delivered to one of the election judges of each division or precinct, as the case may be. Provided, that at all times during said period of thirty days there shall be in the hands of the secretary of the district a sufficient number of such ballots for distribution among qualified electors desiring to vote by mail at elections wherein such voting is authorized. And, provided, further, that at any election for the formation of an irrigation district and prior to the designation and qualification of a secretary, ballots when cast by mail, or sealed and delivered, as before provided, shall be delivered to the county clerk of the county in which is situate the major portion of the lands within the proposed district, who shall be regarded as ex-officio secretary of said district until the designation and qualification of a secretary as provided in this act.

Any person residing within any county in which any portion of an irrigation district shall lie and who is the owner of agricultural lands within the limits of the district shall for the purposes of this act be considered a resident freeholder.

Sec. 92. (Sec. 7, Chap. 20, Laws 1919.) The said Board of County Commisisoners shall meet on the second Monday next succeeding such election and proceed to canvass the votes cast thereat; and, if, upon such canvass, it appears that a majority

of the resident freeholders within the district who are the owners in the aggregate of a majority of the whole number of acres belonging to the resident freeholders within said district or the evidence of title to which is held by such resident freeholders,—including resident entrymen of public lands within such district, who are qualified electors, have voted "Irrigation District—Yes," the said board shall, by order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district, duly certified by the Clerk of the Board of County Commissioners, to be immediately filed for record in the office of the County Clerk of each county in which any portion of such lands are situated, and no board of county commissioners of any county, including any portion of such district, shall, after the date of organization of such district, allow another district to be formed, including any of the lands of such district, without the consent of the Board of Directors thereof; and from and after the date of such filing, the organization of such district shall be complete and the officers thereof shall immediately enter upon the duties of their respective offices upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified.

Sec 94. (Sec. 8, Chap. 20, Laws 1919.) The regular election of said district shall be held on the first Tuesday after the first Monday in December in each second calendar year thereafter, at which said officers shall be elected. The person receiving the highest number of votes for any office to be filled at such election is elected thereto. Within ten days after receiving their certificates of election, hereinafter provided for, said officers shall take and subscribe the official oath and file the same in the office of the County Clerk of the county where the organization was effected, and thereupon immediately assume the duties of their respective offices. Each member of said Board of Directors shall execute an official bond in the sum of three thousand dollars (\$3,000.00), which bond shall be approved by the Chairman of the Board of County Commissioners of said county where such organization was effected, and shall be recorded in the office of the County Clerk thereof. All official bonds herein provided for shall be in form prescribed by law for official bonds for county officials, except that the obligee named in said bond shall be the said district. Premiums upon bonds of directors and also the premium upon the extra amount of the bond required to be

given by the treasurer and ex-officio collector acting as district treasurer under the provisions of this act shall be paid by the district.

Sec. 95. (Sec. 9, Chap. 20, Laws 1919.) The office of the board of directors shall be located in the county where the organization was effected. Fifteen days before any election held under this chapter, subsequent to the organization of the district, the secretary who shall be appointed by the board of directors shall cause notice specifying the polling places of each precinct to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notices, said board must appoint from each precinct, from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of the polls on the morning of election, the electors of the precinct present at the hour may appoint the board or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and the place in the precinct where the election must be held.

Sec. 96. (Sec. 10, Chap. 20, Laws 1919.) One of the judges shall be chairman of the election board and may: First, administer all oaths required in the progress of any election; second, appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify the oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath to faithfully perform the duties imposed on them by law. An elector of the precinct may administer and certify such oath. The polls must be opened at 8 o'clock in the morning of the election and be kept open until 6 o'clock P. M. of the same day. It shall be the duty of the clerk of the board of election to forthwith deliver the return duly certified by the board of directors of the district.

Sec. 97. (Sec. 11, Chap. 20, Laws 1919.) No lists, tally paper, or certificates returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after election and canvass the returns. If at the time of meeting the returns from each

precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the votes of the districts for each person voted for, and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes so returned for each office and also declare the result of any question submitted.

Sec. 98. (Sec. 12, Chap. 20, Laws 1919.) The secretary of the board of directors must, as soon as the result of any election held under the provisions of this act is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located a statement of such results, which statements must show: First, a copy of the published notice of said election; second, the names of the judges of said election; third, the whole number of votes cast in the district and in each precinct of the district; fourth, the names of the persons voted for; fifth, the number of votes given in each precinct for such persons; sixth, the number of votes given in the districts for each of such persons; seventh, the names of the persons declared elected; eighth, the result declared on any question submitted in accordance with the majority of the votes cast for or against such question. The board of directors must declare elected the person having the highest number of votes given for each office, and also the result of any question submitted. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the board of directors, by death, removal, or inability, from any cause, to properly discharge the duties as such director, the vacancy shall be filled by appointment by the remaining members of the board, and upon their failure or inability to act within thirty days after such vacancy occurs, then upon petition of five electors of said district the Board of County Commissioners of the county where the office of said board of directors is situate, shall fill such vacancy or vacancies. Any director appointed as above provided shall hold his office until the next general election of said district, and until his successor is elected and qualified.

Sec. 99. (Sec. 13, Chap. 20, Laws 1919.) The directors, having duly qualified, shall organize a board, elect a president from their number, and appoint a secretary. The board shall have power and it shall be their duty to adopt a seal, manage

and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employes as may be required and prescribe their duties and establish equitable rules and regulations for the distribution and use of water among the owners of said land.

The Board may make such investigations, and based thereon, such representations and assurances to the Secretary of the Interior, as may be requisite under the said act of Congress of August 11, 1916. The Board shall generally perform all such acts as shall be necessary to fully carry out the purposes of this act. Said Board may also enter into any obligation or contract with the United States for the construction, operation and maintenance of the necessary works for the delivery and distribution of water therefrom or for drainage of district lands, or for the assumption, as principal or guarantor of indebtedness to the United States on account of district lands, or for the temporary rental of water under the provisions of this act and of the Federal Reclamation Law and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the Board may contract with the United States for a water supply under any act of Congress providing for or permitting such contract, and in case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety-five per cent of their par value to the amount to be paid by the district to the United States under any such contract, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited it shall be the duty of the Board of Directors to include as part of any levy or assessment now provided for by law, an amount sufficient to meet each year all payments accruing under the terms of any such contract; provided, however, that no irrigation district formed wholly or in part upon any Federal Reclamation Project partially or wholly constructed at the time of the approval of this act shall have the power to issue interest-bearing bonds to be deposited with the United States nor shall interest be paid upon any other obligation entered into between any such district and the United States prior to the date when the same shall become due; and the Board may accept on behalf of the district, appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collection of monies for or on behalf of the United States in connection with any Federal reclamation project, whereupon the district shall be authorized so to act and to assume the duties and liabilities incident to such action, and

the said Board shall have full power to do any and all things required by the Federal Statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the Federal government in regard thereto. Districts co-operating with the United States may rent or lease water to lands of entrymen or municipalities in the neighborhood of the district in pursuance of contract with the United States.

Said Board shall have the power in addition to the means to supply water to said district, to construct, acquire or purchase any and all canals, ditches, reservoirs, reservoir sites, water, water rights, rights of way, or other property necessary for the use of the district. In case of the purchase of any property by said district, the bonds of the district hereinafter provided for may be used at their par value in payment without previous offer of such bonds for sale.

All waters distributed shall be apportioned to each land owner or entryman pro rata to the lands assessed under this act within such district. The Board of Directors shall have the power to lease or rent the use of water or electrical energy or contract for the delivery thereof to occupants of other lands or municipalities within or without the said district at such prices and upon such terms as they deem best, but the rental shall not be less than one and one-half times the amount of the district tax for which said lands would be liable if included in the district lands assessed under this act; Provided, no vested or prescriptive rights to the use of such water shall attach to said land by virtue of such lease or such rental. And, provided further, no rules shall be prescribed or regulations enforced which shall interfere with the vested rights of any water user or with the exercise of such rights of any such water user.

Any land owner or entryman in said district may with the consent of the Board of Directors assign the right to the whole or any portion of the water so apportioned to him for any one year where practicable to any other bona fide land owner; provided, such owner or entryman shall have paid all amounts due on assessments upon all such lands.

Provided, further, that all water the right to use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the district in accordance with the Acts of Congress and rules and regulations of the Secretary of the Interior, and the provisions of said contract in relation thereto.

The rules provided in this section, as soon as adopted, or furnished by the Secretary of the Interior, as the case may be, shall be printed in convenient form for distribution in the district.

Sec. 100. (Sec. 14, Chap. 20, Laws 1919.) The Board of Directors shall hold a regular quarterly meeting in their office on the first Tuesday in January, April, July and October, and such special meeting as may be required for the proper transaction of business. All special meetings shall be called by the president of the board or a majority of the directors. All meetings of the board must be public, and a majority of the board shall constitute a quorum for the transaction of business. All records of the board must be open to the inspection of any elector during the business hours. And in case any district is appointed fiscal agent of the United States or by the United States is authorized to make collections for or on behalf of the United States in connection with any Federal irrigation project, such Boards of Directors or the secretary thereof shall at any time allow any officer or employe of the United States, when acting under the order of the Secretary of the Interior, to have access to all books, records and vouchers of the district which are in possession or control of the Secretary or of said Board. The Board, its agents, and employes shall have the right to enter upon any land in the district to make surveys and to locate any canal or canals and the necessary laterals. Said Board shall also have the right to acquire all lands, water rights, franchises and other property necessary for the construction, use, maintenance, repair and improvement of its canals, ditches, reservoirs and water works; and shall also have the right by purchase or condemnation to acquire right-of-way for the construction, enlargement, extension or improvement of any of its ditches, canals, reservoirs, or other necessary works.

Sec. 101. (Sec. 15, Chap. 20, Laws 1919.) The title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, in its corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart for the uses and purposes set forth in this act, and shall be exempt from all taxation; and said board is authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided; provided, that when any district contemplated in this act shall find it necessary to procure and acquire a supply of water from outside the boundaries of this state, then and in such event it shall be lawful for said district to contract and pay for the same in the same manner as other property acquired by the district is purchased and paid for: Provided, further, that any property acquired by the district may be conveyed to the United States in so far as the same may be needed for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into by the United States pursuant to this act.

Sec. 102. (Sec. 16, Chap. 20, Laws 1919.) The said board is hereby authorized and empowered to take conveyances or assurances for all property acquired by it under the provisions of this act in the name of such irrigation district to and for the purpose herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any of the rights, privileges and immunities created by this act or acquired in pursuance thereof. And in all courts, actions, suits, or proceedings the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits and judicial proceedings in any court of this State of the organization and existence of any irrigation district of this State now or hereafter organized, from and after the filing for record in the office of the county clerk of the certified copy of the order of the Board of County Commissioners mentioned in Section 7, and a certified copy of said order shall be prima facie evidence in all actions, suits and proceedings in any court of this State of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth; and any such irrigation district, in regard to which any such order has been heretofore or may hereafter be entered and such certified copy thereof, so filed for record, and which has exercised or shall exercise rights and powers of such district, and shall have had or shall have in office a board of directors exercising the duties of their office and the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established and existing irrigation district within the meaning of this act and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this act or otherwise.

Sec. 103. (Sec. 17, Chap. 20, Laws 1919.) For the purpose of constructing or purchasing or acquiring necessary reservoir sites, reservoirs, water rights, canals, ditches and works, and acquiring the necessary property and rights therefor, for the assumption of indebtedness to the United States for district lands, for the purpose of paying the first year's interest upon the bonds herein authorized, and otherwise carrying out the provisions of this act, the board of directors of any such district, shall, as soon after such district has been organized as may be practicable, estimate and determine the amount of money nec-

essary to be raised, or amount of indebtedness necessary to be assumed for such purposes, and shall forthwith call a special election, at which election shall be submitted to the electors of such district possessing the qualifications prescribed by this act the question of whether or not the bonds of said district shall be issued in the amount so determined or whether or not contract shall be entered into with the United States as herein provided. A notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper of general circulation published in each county wherein shall be situate any lands within the district once each week for at least four successive weeks. Such notice shall specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this act; provided, that no informalities in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds—Yes" and "Bonds—No" or "Contract—Yes" and "Contract—No", or words equivalent thereto. If any such election shall carry in conformity with the provisions of this act, the Board of Directors shall immediately cause bonds in such amount to be issued, or contract made with the United States. If bonds are not to be deposited with the United States in connection with such contract, bonds need not be issued, or if required for the construction fund in addition to such contract, bonds shall be issued only for the amount needed in addition to such contract; bonds, other than those deposited with the United States, when required, shall be issued and payable in series as follows, to-wit:

At the expiration of eleven years, not less than five per cent of the whole amount and number of said bonds; at the expiration of twelve years, not less than six per cent of the whole amount and number of said bonds; at the expiration of thirteen years, not less than seven per cent of the whole amount and number of said bonds; at the expiration of fourteen year, not less than eight per cent of the whole amount and number of said bonds; at the expiration of fifteen years, not less than nine per cent of the whole amount and number of said bonds; at the expiration of sixteen years, not less than ten per cent of the whole amount and number of said bonds; at the expiration of seventeen years, not less than eleven per cent of the whole amount and number of said bonds; at the expiration of eighteen years, not less than thirteen per cent of of the whole amount and number of said bonds; at the ex-

piration of nineteen years, not less than fifteen per cent of the whole amount and number of said bonds; at the expiration of twenty years, a percentage sufficient to pay off the remainder of said bonds, that the several enumerated percentages be of the entire amount of the bond issue; that each bond must be payable at the given time for its entire amount, and not for a percentage; that said bonds shall bear interest at the rate of not to exceed six per cent per annum, payable semi-annually on the first days of June and December of each year. The principal and interest shall be payable at the office of the County Treasurer of the county in which the organization of the district was effected as aforesaid, and at such other place as the Board of Directors may designate in such bond. Said bonds shall be each of the denomination of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), shall be negotiable in form, executed in the name of the district and signed by the president and secretary and the seal of the district shall be affixed thereto. Provided, that bonds deposited with the United States may be of such denominations, and may call for the repayment of the principal at such times as may be agreed upon between the board and the Secretary of the Interior, and where issued for the construction of projects hereafter undertaken may call for the payment of interest not exceeding six per cent per annum; and where contract is made and bonds are not deposited with the United States, a contract may likewise call for the repayment of principal at such times as may be agreed upon. Said bonds shall be numbered consecutively as issued, and bear date at the time of their issue. Coupons for the interest shall be attached to each bond bearing the lithographed signatures of the president and the secretary. Said bonds shall express on their face that they are issued by the authority of this act, stating its title and date of approval. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received and the name of the purchaser; provided, any such district may, in the manner whereby the issuance of bonds may be authorized, provide for the issuance of bonds that will mature in any number of years less than twenty and arrange for the payment thereof, in series as above provided; Provided, further, that when the money provided by any issue of bonds has become exhausted by expenditures herein authorized therefor and it becomes necessary to raise additional money for such purposes, additional bonds may be issued after submitting the question to the qualified voters of said district, as for an original issue of such bonds: Provided, also, the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue, and the lien for all payments due or to become due under any contract with the United States, accom-

panying which bonds of the district have not been deposited with the United States as in section 13 of this act provided, shall be a preferred lien to any issue of bonds subsequent to the date of such contract.

If contract is proposed to be made with the United States and bonds are not to be deposited with the United States in connection therewith, the question to be submitted to the voters at such special election shall be whether contract shall be entered into with the United States. The notice of election shall state the maximum amount of money payable to the United States for construction purposes exclusive of penalties and interest.

Sec. 104. (Sec. 18, Chap. 20, Laws 1919.) The board may sell bonds from time to time in such quantities as may be necessary and most advantageous to raise the money for the construction of purchase of canals, reservoir sites, reservoirs, water rights and works, and otherwise to fully carry out the objects and purposes of this act. Before making any sale the board shall, at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes and notice of the sale to be given by publication thereof by three insertions thereof at least twenty days prior to such sale in a daily newspaper published in the city of Santa Fe and a like notice in a daily newspaper published in the city of Albuquerque, and any other newspaper at their discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids; but said board shall, in no event, sell any of said bonds for less than ninety-five per cent of the face value thereof. In case no bid is made and accepted as provided in this act, the board of directors is hereby authorized to use said bonds for the purchase of canals, reservoir sites, reservoirs, water rights and works, or for the construction of any canal, reservoir and works; Provided, such bonds shall not be so disposed of at less than ninety-five per cent of the face value thereof.

Sec. 105. (Sec. 19, Chap. 20, Laws 1919.) Said bonds and the interest thereon, and all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States shall be paid, by revenue derived from an annual assessment upon the real property of the district, and the real property of the district shall be made and remain liable to be as-

sessed for such payments as herein provided. Public lands of the United States within any district shall be subject to taxation for all purposes of this chapter to the extent provided by the Act of Congress approved August 11, 1916, upon full compliance therewith by the district.

Sec. 106. (Sec. 20, Chap. 20, Laws 1919.) If any district shall contract with the United States for the construction of drainage works, it shall be within the powers and the duties of the Board of Directors on or before September 1 next preceding the initial payment for such works under contract with the United States to fix and determine the rate or percentage of the benefits from the proposed works for all real property within the district to be affected by said works, subject to judicial confirmation as provided by section 53 of this act. The board shall also assess the damages inflicted upon any real property by the works of the district and such amount shall be deducted from the assessments payable by each owner of lands damaged until compensation for the damages shall have been fully made. If the damage shall be found to exceed the benefits as regards any parcel of real property or any easement, a cash award of the difference shall be made. The said rate of benefits shall be subsequently used as the basis for the annual assessment, but such rate may be changed from time to time by the Board of Directors as new or changing conditions may, in their judgment, require, subject to judicial confirmation as aforesaid. Irrigation districts, as regards drainage costs, may assess realty within the district boundaries owned by all such classes of persons and corporations, to the same extent as now permitted by the laws of this state to drainage districts.

Sec. 107. (Sec. 21, Chap. 20, Laws 1919.) Every person desiring to receive water during the course of the year, at the time he applies for water, shall furnish the Secretary of the Board of Directors of said irrigation district, a statement in writing of the number of acres intended by him to be irrigated, and a statement, as near as may be, of the crops planted or intended to be planted.

The Board of Directors on a date to be fixed by standing order of the Board, which shall not be later than September first of each year, shall estimate and determine the amount of funds required to meet the obligations and needs of the district for the ensuing year, together with such additional amount as may be necessary to meet any deficiency in the payment of expenses or obligations previously incurred by the district and remaining unpaid, for such of the following purposes as may be required by the activities of the district, to-wit:

Item One. The payment of the interest upon bonds of the district and any installment upon the principal thereof;

Item Two. Any payment to become due under any contract with the United States, to secure which bonds have not been deposited with the United States, whether for the cost of irrigation or drainage systems or for the operation and maintenance thereof, or both; or if the lands of the district have been divided by the Secretary of the Interior into units, not necessarily contiguous for repayment purposes, the Board shall prepare separate estimates for each such unit;

Item Three. The portion of the expense of operation and maintenance of the irrigation and drainage systems to be collected by tax assessment and levy. This portion shall not be less than one-fourth, nor more than two-thirds of the estimate for such operation and maintenance costs for the ensuing year, and shall be determined by the Board of Directors of said district from year to year, and the said portion of said operation and maintenance expenses so collected by tax assessment and levy, shall be collected from all lands of the district, whether irrigated or not, except such lands as may be exempted from taxation by the terms of this act, and the same, when collected, shall be applied as a payment on all contracts under which water is delivered in said district. The remainder of said estimated amount shall be paid by the parties actually using said system and water for irrigation or other purposes, in accordance with the terms of their contract for water;

Item Four. Current and miscellaneous expenses, other than as above specified, and necessary to defray the expenses of maintaining the organization of the district and carrying out the purposes of this act, which shall not aggregate more than twenty cents an acre. The amounts to be collected under Item Four may, at the option of the Board of Directors of said district, be collected as tolls and charges in the manner provided in Section 28 of this act.

Lands which, in the opinion of the Board of Directors, are unfit for cultivation by irrigation on account of seepage, alkali or physical condition and location of the land, or other conditions, or lands to which the existing distributing system or extensions thereof cannot furnish water at such points of delivery as the Board may consider reasonable, shall not be taxed for Items One and Three; and provided, that tax shall not be assessed for Item Three against land involved in the Boundary suit now pending in the United States Supreme Court between the State of Texas and the State of New Mexico until the final determination of said suit, unless such land is in cultivation and using water for irrigation; and lands shall not be taxed for Item Two for the periods and to the extent that, on account of seepage or other conditions, in the opinion of the directors or

the Secretary of the Interior, as may be provided by contract with the United States, such lands are not fit for cultivation by irrigation, on account of such condition; but nothing herein contained shall be construed to relieve the district from making provision to raise the amounts required to make full payment to private creditors or to the United States for the full cost of construction or of operation and maintenance, irrespective of the exemption of any lands from taxation, unless expressly provided by the assent of the bond-holders or other private creditors, or by agreement with the United States as the case may be; and in determining the amounts required for the respective items aforesaid, the Board shall take into consideration the gross amount of exemptions and credits allowable pursuant to entries made by the Board upon the assessor's certified list as in Section 22 of this act provided. Proper entry shall be made by the district officers of all exemptions made and of credits allowed. The amount required to meet the obligations of the district, except the portion thereof collected from tolls and charges, shall be raised by tax, assessments, levy and collection as hereinafter provided, to be extended pro rata per acre over all lands in the said district, or in appropriate cases under Item Two above, against all lands in each respective unit of the district. When the Board shall assemble for the purposes hereinbefore prescribed, it shall consider, determine and designate the land within said district which shall be subjected to the assessments and levies hereinbefore mentioned.

Notice of the time, place and purpose of such meeting shall be given by publication in English and Spanish in some newspaper or newspapers of general circulation published within the county wherein the headquarters of the district are located, and shall inform all the persons interested that at the time and place specified, an opportunity will be afforded to appear before the board and show cause why any particular tract of land, or any portion thereof, should be exempted from taxation under the provisions of this act. Such notice shall be published once each week for four successive weeks, and the last publication shall be not less than three days prior to the date fixed for such meeting. Proof of such publication shall be furnished by the publisher and shall be filed in the archives of the secretary of the district.

At such meeting said board of directors, subject to such reasonable regulations as it may prescribe, shall afford to all persons desiring to do so, an opportunity to make such showing as they may deem proper as to why any given tract of land or portion thereof, shall be exempted from taxation as aforesaid, In each case the Board may cause to be made such investigation as it may deem proper, after which the Board shall determine

the question submitted as right and justice may require, and shall cause its decision to be duly entered upon its minutes, and a copy thereof to be sent by registered mail to all parties who have made claim of exemption of land from taxation as aforesaid.

Any person feeling himself aggrieved by any such decision as aforesaid may appeal therefrom to the district court of the county wherein the decision is rendered at any time within thirty days from and after the rendition and mailing as aforesaid, of said copy of the decision complained of, by serving upon the secretary of the district written notice of such action and filing a copy thereof together with a copy of the decision complained of, in the office of the clerk of the court to which the appeal is taken. Upon being served with such notice, the secretary of the district shall forthwith transmit to the clerk of such court a certified transcript of all papers and records pertaining to the case which may have been filed in connection therewith. Upon such appeal the case shall be tried in such district court subject to the law, rules, and practice governing such court as upon writ of certiorari.

The filing of said appeal in said district court shall not stay the proceedings relating to the collection of said tax, but in the event that appellant has paid said tax before the rendition of final judgment in said suit, and judgment is rendered in said suit in favor of appellant, appellant shall have refunded to him such sum of money as shall be determined by the judgment of the court, together with legal interest thereon and costs of court. But if appellant fails to recover in said suit, appellant shall pay all costs of court.

In case the assets and liabilities of any Water Users' Association are taken over as in Section 1 of this act provided, the board of directors shall allow to the owner of lands on account of which payments shall have been made to said association all proper and equitable credits to which the said owner may be entitled, according to the books and records of said association which shall be prima facie evidence of the credits of its various members, and such credits shall be taken into consideration by the board of directors in determining the amount of money required to meet obligations, maintenance, operating and current expenses of the district for the ensuing year, and the board of directors shall certify to the county commissioners the amount of such credits, and levy hereinafter provided for shall be made accordingly.

The term "asset" as used herein, includes any and all grants, rights, powers, privileges and appropriations heretofore conferred by any law, general or special, upon any Water Users' Association, and upon taking over the assets of any Water Users' Association as hereinbefore provided, by any irrigation

District, said District shall succeed to all such grants, rights powers, privileges and appropriations and the officers of said Irrigation District are authorized and empowered to perform such duties and to execute such instrument in regard thereto, as said law required of the officers of said Water Users' Association.

Sec. 108. (Sec. 22, Chap. 20, Laws 1919.) It shall be the duty of the County Assessor of any county embracing the whole or any part of an Irrigation District to enter upon his tax roll each year the name of the owner, description and area of each tract of land in the said district in said county subject to taxation under this act, and to deliver a certified list thereof to the County Commissioners of said county and to transmit a like certified list to the secretary of said irrigation district on or before July first of each year. If the board of directors has exempted any lands from taxation in whole or in part, or if the Secretary of Interior has taken similar action pursuant to contract with the district, or if any tract is entitled to credit upon assessments by reason of payments to any water users' association also, under the provisions of Section 21 of this act, or if there be drainage assessments judicially confirmed as in this act provided, or awards for damages due to drainage or other work pursuant to section 20 of this act, the secretary of the district shall note such exemptions, credits, and drainage assessments and awards for each tract upon the certified list furnished by the assessor as in this section provided, and the said list, together with the items prescribed in section 21 of this act, shall be delivered to the county commissioners of the county in which the office of the said irrigation district is located on or before September 1 of each year.

Sec. 109. (Sec. 23, Chap. 20, Laws 1919.) It shall be the duty of the County Commissioners of the county in which the office of the district is located, acting under the provisions of this act, upon the receipt of the certificate of the Board of Directors, certifying the amounts to be raised for the different purposes hereinbefore mentioned, and upon receipt of the assessor's certified list of the tracts of lands in the district upon which the secretary of the district has entered the notations hereinbefore referred to, to fix the respective rates of levy per acre necessary to provide the amounts of money required for said purposes as specified in said certificate. The rate of levy necessary to raise the required amount of money for said district shall be increased 15 per cent to cover delinquencies. And if there be any other county or counties wherein are situate lands within the district to be taxed hereunder the said county commissioners shall certify to the county commissioners of such other county or counties, the said tax levies and

the lists of land in such other county or counties subject to taxation therefor. The respective Boards of County Commissioners of such other counties shall furnish to the respective county assessors of such other counties such tax levies and lists of lands, and such county assessors shall thereupon cause extension to be made upon their assessment rolls of the amounts due from each tract of land for each of said purposes in separate columns and also the total taxes so levied for all of the purposes of said irrigation district, and also the total amount due from each tract for all of the purposes of said irrigation district.

For the purposes of said district, it shall be the duty of the county commissioners in each county in which any irrigation district is located, in whole or in part, at the time of making the levy for county purposes, to make a levy as above provided, upon all lands within their respective counties, subject to taxation under this act, and to deliver a notice thereof to the county assessor, which notice shall be accompanied by a certified list of said tracts of land within said district with notations made thereon as aforesaid.

Sec. 110. (Sec. 24, Chap. 20, Laws 1919.) The county treasurer of the county in which is located the office of any irrigation district, shall be and is hereby constituted ex-officio district treasurer of said district, and said county treasurer shall be liable upon his official bond, and to indictment and criminal prosecution for malfeasance, misfeasance or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. Said treasurer shall receive and receipt for all monies belonging to said district. It shall be the duty of the county treasurer in each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes levied as herein provided, in the same manner and at the same time as is required in the receipt for, and collection of, taxes upon real estate for county purposes; provided, that such county treasurer shall receive in payment of the district bond fund taxes above mentioned for the year in which said taxes were levied, interest coupons or bonds issued by said irrigation districts maturing within said year, the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of taxes for district bond funds which the person tendering the same owes. The county treasurer of each county comprising a portion only of any irrigation district, excepting the county treasurer of the county in which the office of said district is located, on the first Monday of every month, shall remit to the district treasurer aforesaid, all monies and coupons theretofore collected or received by him on account of said district. Every county treasurer shall keep

a district bond fund account, a district contract fund account, a district operation and maintenance fund account, and a district general fund account, and the proceeds of the taxes collected shall be covered into the respective funds. The bond fund shall consist of all monies collected for principal and interest of the bonds issued by the said district; the district contract fund shall consist of all monies received from taxes levied to provide for payments to the United States; the operation and maintenance fund shall consist of all monies received on account of the operation and maintenance of irrigation and drainage system, except monies to be paid to the United States pursuant to any contract; and the general fund shall consist of all monies received on account of current and miscellaneous expenses, not to be covered into any of the foregoing funds.

The district treasurer aforesaid shall pay out of said bond fund when due, the interest and principal of said bonds of said district, at the time and place specified in said bonds. The district treasurer shall pay out of said contract fund, all payments as they become due to the United States under contract at the time and in the manner provided in said contract. The district treasurer shall pay out of said operation and maintenance fund, only upon warrants signed by the president and countersigned by the secretary of the district, directed to such party or parties as are due payments for operating and maintaining said irrigation and drainage system. The district treasurer shall pay out of said general fund only upon order signed by the president and countersigned by the secretary of said district.

The district treasurer, on the fifteenth day of each month, shall report to the board of directors of said district the amount of money in his hands to the credit of the respective funds above provided. All such district taxes collected and paid to the county treasurers as aforesaid shall be received by said treasurers in their official capacity and they shall respectively be responsible for the safekeeping, disbursement and payment thereof the same as for other monies collected by them as such treasurers. Provided, that said county treasurers shall not receive any commission for the collection of said district taxes but shall receive for clerical assistance the sum of ten (\$10.00) dollars monthly for each 25,000 acres of land or major fraction thereof situate in his county, subject to taxation herein for district purposes.

Sec. 111. (Sec. 25, Chap. 20, Laws 1919.) The revenue laws of this state for the assessment, levying and collection of taxes on real estate for county purposes except as herein modified, shall be applicable for the purposes of this act, including the enforcement of penalties and forfeiture for delinquent taxes.

Sec. 112. (Sec. 26, Chap. 20, Laws 1919.) After adopting a plan for the construction of canals, reservoirs and works, the

board of directors shall give notice, by publication thereof, not less than twenty days in a newspaper published in each of the counties into which any such irrigation extends, provided a newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating that the time and place for opening the proposals, which at said time and place shall be opened in public, and as soon as convenient thereafter, the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any or all bids and re-advertise for proposals, or may proceed to construct the work under their own superintendence.

Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than ten per cent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge and be approved by the board.

Provided, That the provisions of this section shall not apply in case of any contract between the district and the United States.

Sec. 113. (Sec. 27, Chap. 20, Laws 1919.) No claim, except as otherwise provided in Section 24, shall be paid by the district treasurer until the same shall have been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall state the date authorized by the board and for what purpose: Provided, No warrant shall be issued or obligation incurred unless the district treasurer has sufficient funds on hand to pay such warrant when it is presented for payment. All claims against the district shall be verified and the secretary of the district is hereby authorized and empowered to administer oaths to the parties verifying such claims the same as the county clerk or a notary public might do. The district treasurer shall keep a register in which he shall enter each warrant presented for payment, showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment, and all warrants shall be paid in the order of their presentation for payment to the district

treasurer. All warrants shall be drawn payable to the claimant or bearer, the same as county warrants.

Sec. 114. (Sec. 28, Chap. 20, Laws 1919.) For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair, and improvement of all canals, ditches, reservoirs and works, including salaries of officers and employes, or for payment of charges to the United States for the temporary rental of water, the board may either fix rates of tolls and charges and collect the same of all persons using said canal and water for irrigation, or other purposes, and in addition thereto may provide, in whole or in part, for the payment of such expenditures by levy of assessments therefor, as heretofore provided, or by both tolls and assessments; provided, that if any contract be made with the United States the charge for operation and maintenance of the district and for temporary rental of water may be fixed in accordance with the Federal laws, notices, rules and regulations and the contract with the district.

Sec. 115. (Sec. 29., Chap. 20, Laws 1919.) The board of directors shall have the power to construct the said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch or flume which the route of said canal or canals may intersect or cross; and if such railroad company and said board, or the owners and controllers of said property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of said crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land for public uses. The right-of-way is hereby given, dedicated and set apart, to locate, construct and maintain said works or reservoirs, over, through, or upon any of the lands which are now, or may be the property of the state.

Sec. 116. (Sec. 30, Chap. 20, Laws 1919.) The members of the Board of Directors other than the president shall each receive compensation at the rate of two and one-half dollars per day while attending meetings or otherwise necessarily employed in the discharge of their duties and their actual and necessary traveling expenses while engaged in official business. The president of said board shall receive as compensation one hundred and fifty dollars per annum for each ten thousand acres of land or major fraction thereof included within the district, and his actual and necessary traveling expenses while engaged in official business. No director or officer named in this act shall in any manner, be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; nor shall receive any bonus gratuity or bribe, and for any violation of this provision, such officer shall be deemed guilty of a felony

and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the penitentiary not exceeding five years.

Sec. 117. (Sec. 31, Chap. 20, Laws 1919.) The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act and any debt or liability incurred in excess of such express provision shall be and remain absolutely void.

Sec. 118. (Sec. 32, Chap. 20, Laws 1919.) In case the volume of water in any canal, reservoir, or other works in any district shall not be sufficient to supply the continual wants of the entire district and susceptible of irrigation therefrom, then it shall be the duty of the board of directors to distribute all available water upon certain or alternate days to different localities, as they may in their judgment think best for the interests of all parties concerned.

Provided: That all water the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, and rules and regulations of the Secretary of Interior and provisions of such contract in relation thereto.

Sec. 119. (Sec. 33, Chap. 20, Laws 1919.) Nothing herein contained shall be deemed to authorize any person or persons, to divert the waters of any river, creek, stream, canal, or reservoir to the detriment of any person or persons having a prior right to the waters of such river, creek, stream, canal or reservoir.

Sec. 120. (Sec. 34, Chap. 20, Laws 1919.) The boundaries of any irrigation district now or hereafter organized under the provisions of this act may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge, for, or upon which it was or might become liable or chargeable had such change of boundaries not been made; provided, that if the Secretary of the Interior shall give his assent to a change in boundaries in writing filed with the board of directors, any lands to the exclusion of which from the district assent shall thus be given, shall be discharged from any and all liens in favor of the United States under any contract which shall have been made with the United States and any bonds deposited with its agents.

Sec. 121 (Sec. 35, Chap. 20, Laws 1919.) The holder or

holders of title, or evidence of title, of any body of land adjacent to or situate within the boundaries of any irrigation district, may file with the board of directors of said district a petition in writing praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioners, but such description need not be more particular than is required when such lands are entered by the county assessor in the assessment book. Such petition shall be deemed to give the assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Sec. 122. (Sec. 36, Chap. 20, Laws 1919.) The secretary of the board of directors shall cause notice of the filing of such petition to be given and published one each week for three successive weeks in a newspaper published in the county where the office of said board is situate, which notice shall state the filing of such petition and the names of the petitioners; a description of the lands mentioned in the petition, and the prayer of said petitioners; giving notice to all persons interested, to appear at the office of said board at a time named in said notice, and to show cause, in writing, if any they have, why the petition should not be granted. The time specified in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners, shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give such notice.

Sec. 123. (Sec. 37, Chap. 20, Laws 1919.) The board of directors, at the time and place mentioned in said notice, or at such time or times to which the hearing of such petition may adjourn, shall proceed to hear the petition, and all objections thereto, presented in writing by any person, showing cause as aforesaid, why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the inclusion of such lands in said district as prayed for in said petition.

Sec. 124. (Sec. 38, Chap. 20, Laws 1919.) The board of director, to whom such petition is presented, may require as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated by the board, as said petitioners or their grantors would have been required to pay to such district as assessment for the payment of their pro

rata share of all bonds and interest thereon, which may have previously thereto been issued by said district, or for the payment of the pro rata share of the cost of construction under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as in this act provided, had such lands been included in such district at the time the same was originally formed or when said bonds were so issued, or when said contract with the United States was made; provided, that in case unentered public land is proposed to be annexed to the district the board of directors of the district instead of requiring such payment as a condition precedent, may assess such charges against such unentered public land upon the records of the district to be collected in the manner authorized by the said Act of Congress of August 11, 1916.

Sec. 125. (Sec. 39, Chap. 20, Laws 1919.) The board of directors if they deem it not for the best interests of the district to include therein the lands mentioned in the petition, shall by order reject the said petition, but if they deem it for the best interests of the district that said lands be included the board may order that the district be so changed as to include therein the lands mentioned in the said petition. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries be changed thereby, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary; Provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the inclusion of such lands in said district, said order shall be held for naught and said lands shall not be included therein.

Provided, further, that in case contract has been made between the district and the United States as in section 13 hereof provided, no change shall be made in the boundaries of the district and the board of directors shall make no order changing the boundaries of the district until the Secretary of the Interior shall assent thereto in writing and such assent be filed with the board of directors.

Sec. 126. (Sec. 40, Chap. 20, Laws 1919.) Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change, and a plat of such district, showing such change, if any, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district, as fully as to every intent and purpose as if the lands which

are included in the district by the change of the boundaries as aforesaid, had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district.

Provided, that in case contract has been made between the district and the United States as in section 13 hereof provided, no change shall be made in the boundaries of the district until the Secretary of the Interior shall assent thereto in writing and such assent be filed with the board of directors.

Sec. 127. (Sec. 41, Chap. 20, Laws 1919.) Upon the filing of the copies of the order and the plat, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

Sec. 128. (Sec. 42, Chap. 20, Laws 1919.) A guardian, executor or administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed.

Sec. 129. (Sec. 43, Chap. 20, Laws 1919.) In the case of the inclusion of any land within any district by proceedings under this act, the board of directors shall, at least thirty days prior to the next succeeding general election, make an order re-dividing such district into divisions, as nearly equal in size as may be practicable, being in number as in section 5 of this act provided, and which shall be numbered consecutively, and one director shall thereafter be elected from each division. For the purposes of election the board of directors shall establish a convenient number of election precincts in said district, and define the boundaries thereof, which said precincts may be changed from time to time as the board may deem necessary.

Sec. 130. (Sec. 44, Chap. 20, Laws 1919.) Any tract of land included within the boundaries of any such district, at or after its organization under the provisions of this act, may be excluded therefrom, in the manner herein prescribed, but such exclusion of land from the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatever kind or nature; nor shall such exclusion affect, impair or discharge any contract, obligation, lien or charge for or upon which it would or might become

liable or chargeable, had such land not been excluded from the district.

Sec. 131. (Sec. 45, Chap. 20, Laws 1919.) The owner or owners in fee of any lands constituting a portion of any irrigation district may file with the board of directors of the district, a petition praying that such lands may be excluded and taken from said district. The petition shall described the lands which the petitioners desire to have excluded, but the description of such lands need not be more particular than required when lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land.

Sec. 132. (Sec. 46, Chap. 20, Laws 1919.) The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least three weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of said district lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of the said notices must be so posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, description of the lands mentioned in said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at a time in said notice, and show cause in writing, if any they have, why said petition should not be granted. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under the petition before the secretary shall give such notice.

Sec. 133. (Sec. 47, Chap. 20, Laws 1919.) The board of directors at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by any persons, showing cause as aforesaid why the prayer of said petition should not be granted. The filing of such petition with the board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof.

Sec. 134. (Sec. 48, Chap. 20, Laws 1919.) The board of

directors, if they deem it not for the best interest of the district that the lands mentioned in the petition or some portion thereof, should be excluded from said district, shall order that said petition be denied; but if they deem it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition, or some defined portion thereof, to be excluded from the district; Provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the exclusion of such lands from said district, said order shall be held for naught and such lands shall not be excluded therefrom.

Provided, further, that in case contract has been made between the district and the United States as in section 13 hereof provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the Secretary of the Interior shall assent thereto in writing and such assent shall be filed with the board of directors.

Sec. 135. (Sec. 49, Chap. 20, Laws 1919.) Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situated any of the lands of the district, and the district shall remain an irrigation district as fully to every intent and purpose as if the lands which are excluded by the change of the boundary as aforesaid, had not been excluded therefrom. And, provided, further, that in case contract has been made between the district and the United States as in section 13 of this act provided, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district until the Secretary of the Interior shall assent thereto in writing and such assent be filed with the board of directors. Upon the filing of such assent, however, the lands excluded from any such district shall be discharged of all liens in favor of the United States under any contract with the United States or under bonds deposited with its agents.

Sec. 136. (Sec. 50, Chap. 20, Laws 1919.) At least thirty days before the next general election of such district the board of directors thereof may make and order, dividing said district into divisions, as nearly equal in size as practicable, being in number as in section 5 of this act provided, and which shall

be numbered consecutively, and one director shall be elected for each division by the qualified electors of the whole district. For the purpose of election in such district the said board of directors must establish a convenient number of election precincts and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary.

Sec. 137. (Sec. 51, Chap. 20, Laws 1919.) Whenever a majority of the resident freeholders, representing a majority of the number of acres of irrigable land, in any irrigation district organized or hereafter to be organized, under this act, shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of said irrigation district, a proposition to vote on the dissolution of said irrigation district, setting forth in said petition that all bills and claims of every nature whatsoever have been fully satisfied and paid, it shall be the duty of said directors, if they shall be satisfied that all bills and claims have been fully satisfied, to call an election, setting forth the object of the said election, and to cause notice of said election to be published in some newspaper in each of the counties or county in which said district is located, for a period of thirty (30) days prior to said election, setting forth the time and place for holding said election in each of the voting precincts in said district. It shall also be the duty of the directors to prepare ballots to be used at said election on which shall be written or printed the words: "For Dissolution—Yes," and "For Dissolution—No."

Sec. 138. (Sec. 52, Chap. 20, Laws 1919.) The board of directors shall name a day for canvassing the vote, and if it shall appear that a majority of the ballots contain the words, "For Dissolution—Yes," then it shall be the duty of said board of directors to declare said district to be disorganized, and they shall certify such fact to the county clerk of the respective counties in which the district is situated, stating the number of signers to the petition; that said election was called and set for the.....day of.....month of.....year; that said election was held and that so many votes (stating the number) had been cast for, and that so many votes (stating the number) had been cast against, said proposition. Said certificate shall bear the seal of the district, and the signatures of the president and secretary of said board of directors. It shall be the duty of the said respective clerks to record all such certificates in the records of the respective counties. Should it appear that a majority of the votes cast at said election were "For Dissolution—No," then the board of directors shall declare the proposition lost and shall cause the result and the vote to be made a part of the records of said irrigation district.

Provided, however, that no dissolution shall be made of the

district, and the board of directors shall make no order dissolving the same until the Secretary of the Interior shall assent thereto in writing and such assent be filed with the board of directors.

Sec. 139. (Sec. 53, Chap. 20, Laws 1919.) The board of directors of any irrigation district organized under the provisions of this act shall commence special proceedings in and by which the proceedings of said board and of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not been sold or disposed of, or in and by which the proceedings of said board and of said district providing for the authorization of contract with the United States may be judicially examined, approved and confirmed. Such proceedings shall be brought within sixty days after the adoption of resolution by the board declaring that the bond election or election for the authorization of the execution of contract with the United States has been voted upon favorably by the electorate of the district. The board may, however, in its discretion, bring an action prior to the time specified, whereby the validity of the organization of the district or of any steps leading to the issuance of bonds or to the making of contract as aforesaid, may be separately judicially examined, approved and confirmed. Within sixty days after the ascertainment of the rate or percentage of drainage benefits, and of the award for damages inflicted by drainage works, as in this act provided, the board shall bring a similar special proceeding, whereby such assessment and award may be judicially examined, approved and confirmed. In the event of the inclusion by any irrigation district of additional lands, or the exclusion of lands previously within the boundaries of any such district, the board of directors may, if they deem it advisable so to do, institute a special proceeding in like manner and with like effect as herein provided for the confirmation of bonds, whereby the proceedings for such change of boundaries may be judicially examined, approved and confirmed.

Sec. 140. (Sec. 54, Chap. 20, Laws 1919.) The board of directors of the irrigation district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying, in effect, that the proceedings aforesaid may be examined, approved and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of bonds, or for the authorization of contract with the United States, or for the determination of the rate of drainage benefits and award of damages, as the case may be, and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected, but the petition need not

state the facts showing such organization of the district or the election of said first board of directors.

Sec. 141. (Sec. 55, Chap. 20, Laws 1919.) The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of such petition. The notice shall be given and published once each week for four consecutive weeks in a newspaper of general circulation published in each county wherein shall be situate any lands within the district. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds, or in any such other proceedings as may be in question, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of..... irrigation district (giving its name), praying that the proceedings for the issue and sale of said bonds of said district, or that the proceedings for the authorization of contract with the United States, or the validity of the determination of the rate of drainage benefits and of the award of damages, as the cases may be respectively, may be examined, approved and confirmed by the court.

Sec. 142. (Sec. 56, Chap. 20, Laws 1919.) Any person interested in said district or in the issue or sale of said bonds, or in such other proceedings as may be in issue as herein provided, may demur to or answer said petition. The provisions of Chapter LXXXVIII respecting the demurrer and answer to a verified complaint shall be applicable to a demurrer and answer to said petition. The person so demurring and answering said petition shall be the defendant to the special proceedings and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall, for the purpose of said special proceedings, be taken as true, and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice relating to appeals and writs of error as provided by Chapter 43, Laws of 1917, which are not inconsistent with the provisions of this act are applicable to the special proceedings herein provided for; provided, appeals to the supreme court of the state involving the special proceedings herein mentioned shall be taken within twenty days, and shall be perfected within sixty days after the granting of any such appeal.

Sec. 143. (Sec. 57, Chap. 20, Laws 1919.) Upon the hearing of such special proceedings the court shall find and determine whether the notice of the filing of the petition has been duly

given and published for the time and in the manner in this act prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of said act, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, and the order of the sale and the sale thereof, and all the proceedings, if any, as the case may be, for the authorization of contract with the United States, and the validity of the determination of the rate of drainage benefits and award of damages, which shall have been made pursuant to contract with the United States. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard and error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings and the court may by decree approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The cost of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court. The judgment when finally made an entered, shall be res judicata in all cases arising in connection with the organization of the district, and the collection of taxes for payment of the principal and interest of bonds or for payment of monies required by contract with the United States, and in connection with the award of damages. Provided, however, that a re-opening of the judgment upon the rate of drainage benefits may be had at the petition of the board of directors, upon sufficient cause shown.

Sec. 144. (Sec. 58, Chap. 20, Laws 1919.) Wherever the word district is used in this act it shall be held to mean and include only the lands described in the official order establishing said district and the official plat thereof on record in the office of the county clerk, as hereinbefore provided in this act, and such lands as may be included in any district in accordance with the provisions of section 34 to 43, inclusive.

Sec. 145. (Sec. 59, Chap. 20, Laws 1919.) This act shall be construed as applying only to districts organized for the purpose of co-operation with the United States under the federal reclamation law or other federal laws as defined in section 1 hereof and nothing herein contained shall be so construed as to affect or interfere with the organization, operation or maintenance of any irrigation district organized or to be organized under any other laws of this state. Nor shall this act be so construed as to affect the validity of any district heretofore organized under the laws of this state for the purpose of co-operation with the United States under the federal reclamation

law or other federal laws, or its right in or to property or any of its rights or privileges of whatsoever kind or nature; but said districts are hereby made subject to the provisions of this act so far as applicable; nor shall this act be construed to affect, impair or discharge any contract, obligation, lien or charge, for, or upon which such district was or might become liable or chargeable had not this act been passed; nor shall it affect the validity of any bonds which have been issued and sold, or issued but not sold; nor shall it affect any action which may now be pending.

Provided, that any irrigation district heretofore organized, or hereafter to be organized under the provisions of any other laws of this state which may desire to co-operate with the United States under the federal reclamation law or other federal laws, may enter into a contract with the United States providing for such co-operation with the United States, and after such contract shall have been approved by a majority of the qualified electors of said district at an election held as provided under this act, such irrigation district shall thereafter become subject to the provisions of this act.

Sec. 146. (Sec. 60, Chap. 20, Laws 1919.) All acts or parts of acts in conflict herewith are hereby repealed.

Sec. 147. (Sec. 61, Chap. 20, Laws 1919.) That it is necessary for the preservation of the public peace and safety of the inhabitants of the State of New Mexico, that the provisions of this act shall become effective at the earliest possible time, and therefore an emergency is hereby declared to exist and this act shall take effect and be in full force and effect from and after its passage and approval.

Sec. 148. (Sec. 1, Chap. 41, Laws 1919.) Whenever a majority of the resident freeholders owning more than one-half of the lands or the evidence of title to said lands in any district in the State of New Mexico desire to provide for the irrigation of the same they may propose the organization of an irrigation district under the provisions of this act, and when so organized each district shall have the powers conferred or that may hereafter be conferred by law upon such irrigation district; Provided, that where ditches, canals or reservoirs were constructed before March 18, 1909, such ditches, canals, reservoirs and franchises and the lands irrigated therefrom shall be exempt from the operation of this act, unless such district be formed to purchase, acquire or lease such ditches, canals, reservoirs and their franchises, or unless a statement, signed by at least four-fifths in number of the owners of any such ditch, canal or reservoir and of the franchise and water rights therefor and of the lands irrigated therefrom, be filed with the board of county commissioners of each county in which such ditch, canal, reservoir and lands are situate, giving their

consent that such ditch, canal, reservoir, franchise, water rights and lands may be included in one or more irrigation districts organized or to be organized under the provisions of this Act, which statement shall be recorded in the office of the county clerk of said county.

Sec. 149. (Sec. 2, Chap. 41, Laws 1919.) Nothing in this Act shall be construed to in any manner affect the rights of water users under community ditches in towns or villages in this state as to their voting power in determining whether any such ditch shall be included in an irrigation district, and each of said water users shall have the same right and voice in determining such question and in the signing of the statement provided for in the preceding section as he has in the control and management of such ditch.

Sec. 150. (Sec. 3, Chap. 41, Laws 1919.) For the purpose of the establishment of an irrigation district as provided by this Act, a petition shall be filed with the board of county commissioners of the county which embraces the largest acreage of the proposed district praying that said board define and establish the boundaries of said proposed district and submit the question of the final organization of the same to the vote of the qualified electors resident therein. Said petition shall state that it is the purpose of the petitioners to organize an irrigation district under the provisions of this Act and shall also contain a general description of the boundaries of such proposed district, the means proposed to supply water for the irrigation of the lands embraced therein, the name proposed for such district and the names of three of said petitioners selected as a committee to present such petition to the Board of County Commissioners. Said petition shall be signed by a majority of the resident freeholders within said proposed district, and who shall also be the owners in the aggregate of a majority of the whole number of acres of land within the said proposed district. The said petition shall also be accompanied by a good and sufficient bond, to be approved by said Board of County Commissioners in double the amount of the probable cost of organizing such district, conditioned for the payment of all costs incurred in said proceeding in case said organization shall not be effected, but in case such organization is so effected, then said expenses incurred by the Board of County Commissioners shall be paid back to said county by said district. Such petition shall be published both in English and Spanish for at least two weeks before the time at which the same is to be presented, in some newspaper of general circulation published in the county where said petition is to be presented, together with a notice signed by the committee of said petitioners selected by the petition for that purpose stating the time and place of presentation of the same to said

Board of County Commissioners. The last publication shall be made not less than five days prior to the time fixed by said notice for presenting said petition.'

For the purpose of this Act the term "resident freeholder" shall be construed to mean any citizen of the United States who owns lands within the district or the evidence of title to said land, or who is an entryman under the public land laws of the United States or a purchaser under contract for purchase of State lands, and shall also include corporations, associations and co-partnerships owning land within the district. The president or vice-president of such corporation or association, or any members of such co-partnership, if a citizen of the United States, may represent such corporation, association or co-partnership respectively in signing such petition or any other petition or protest provided for in this Act.

Sec. 151. (Sec. 4, Chap. 41, Laws 1919.) When such petition is presented and it shall appear that the notice of the presentation of said petition has been given as required by law, and that said petition has been signed by the requisite number of petitioners as required by this Act, the commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such applications for the exclusion of lands therefrom and the inclusion of lands therein as may be made in accordance with the intent of this Act. They may adjourn such examination from time to time not exceeding three weeks in all and shall by final order duly enter upon their records define and establish the boundaries of such proposed district; Provided, That the said Board shall not modify such proposed boundaries described in the petition so as to change the objects of said petition or so as to exempt from the operation of this Act any land within the boundaries proposed by the petition susceptible to irrigation by the same system of irrigation works applicable to other lands in such proposed district; nor shall any land which will not in the judgment of the Board be benefited by such proposed system be included in such district if the owner thereof shall make application at such hearing to withdraw the same; Provided, also, That contiguous lands not included in said proposed district as described in the petition may upon application of the owner or owners be included in such district upon such hearing, if it shall be determined by said board that the water supply for such additional lands is available and that in other respects it is feasible for the lands of such applicant to be included within such district.

When the boundaries of any proposed district shall have been examined and defined as aforesaid the Commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries and designating

the name of such proposed district. Thereupon the said Commissioners shall by further order duly entered upon their records call an election of the qualified electors of said district to be held for the purpose of determining whether such district shall be organized under the provisions of this Act, and by such order shall submit the names of one or more persons from each of the three divisions of said district as hereinafter provided to be voted for as directors therein, and for the purpose of said election shall divide said district into three divisions as nearly equal in size as may be practicable to be numbered respectively 1, 2 and 3, and shall provide that a qualified elector of each of said three divisions shall be elected as a member of the board of directors of said district by the qualified electors of the whole district. Each of said divisions shall constitute an election precinct and the Commissioners shall appoint three judges for each of such precinct, one of whom shall act as clerk of said election; Provided, That in the hearing of any such petition the Board of County Commissioners shall disregard any informality therein, and in case they deny the same or dismiss it for any reason on account of the provisions of this Act not having been complied with, which is the only reason upon which they shall have a right to refuse to dismiss the same, they shall state their reason in writing therefor in detail, which shall be entered upon their records; and in case such reason is not well founded, a writ of mandamus shall, upon proper application therefor, be issued out of the district court of said county, compelling them to act in compliance with this Act, which writ shall be heard within twenty days from the date of its issuance. The affairs of such district shall be managed by a board of three directors.

Sec. 152. (Sec. 5, Chap. 41, Laws 1919.) The Board of County Commissioners shall thereupon cause notice embodying said orders in substance signed by the chairman and clerk of said board to be issued, given and published, giving public notice of said election, the time and places thereof, and the matters submitted to the vote of the electors. Said notice and order shall be published once a week for at least three weeks immediately prior to the date fixed for such election in a newspaper of general circulation published in said county, and if any portion of such proposed district lies within any other county or counties, then such order and notice shall be published in a newspaper of general circulation published within each of said counties. At said election and all elections held under the provisions of this Act, all persons who are resident freeholders and owners of land within such district, who are citizens of the United States over twenty-one years of age (except idiots, insane persons, convicted felons not restored to political rights and Indians not taxed) shall be qualified electors: Provided, that if any farm or tract of land in such

district is owned by more than one owner, only one person shall be permitted to vote at any election as the owner of such one farm or tract of land. Insofar as applicable the general election laws of the State, except requirements for registration and except as otherwise provided in this Act, shall govern such elections. The ballots to be used and cast at such election for the formation of such district shall have printed thereon the words: "Irrigation District—Yes," and "Irrigation District—No," or words equivalent thereto, and shall also contain the names of the persons to be voted for as members of the board of directors of said district. Each elector may vote for three directors, one from each division, and shall indicate his vote by placing a marginal cross upon the ballot for or against any question submitted or name voted upon and opposite thereto. Sec. 153. (Sec. 6, Chap. 41, Laws 1919.) The said Board of County Commissioners shall meet on the second Monday next after such election and canvass the votes cast thereat; and if it appears upon such canvass that at least two-thirds of the qualified electors voting at said election have voted "Irrigation District—Yes," the said board shall, by order duly entered upon the records, declare such territory duly organized as an irrigation district under the name and style theretofore designated, and shall declare the persons receiving respectively the highest number of votes for director to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district, duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and no board of county commissioners of any county including any portion of such district shall, after the date of organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof; and from and after the date of such filing the organization of such district shall be complete and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified. The boundaries of said divisions and the voting precincts and polling places in any such district may, after such first election, be changed by order of the board of directors of the district; Provided that the polling places shall be designated in the notice published for every election in the district.

Sec. 154. (Sec. 7, Chap. 41, Laws 1919.) The regular election of said district shall be held on the first Tuesday after the first Monday in December in each second calendar year thereafter, at which said officers shall be elected. The person re-

ceiving the highest number of votes for any office to be filled at such election is elected thereto. Within ten days after receiving their certificates of election, hereinafter provided for, said officers shall take and subscribe the official oath and file the same in the office of the county clerk of the county where the organization was effected, and thereupon immediately assume the duties of their respective offices. Each member of said board of directors shall execute an official bond in the sum of three thousand dollars (\$3,000.00), which bond shall be approved by the chairman of the board of county commissioners of said county and shall be recorded in the office of the probate clerk and ex-officio county recorder thereof. All official bonds herein provided for shall be in form prescribed by law for official bonds for county officials, except that the obligee named in said bond shall be the said district. The premiums upon such bonds and the bonds required from any other officer of the district shall be paid by the district.

Sec. 155. (Sec. 8, Chap. 41, Laws 1919.) The office of the board of directors shall be located in the county where the organization was effected. Fifteen days before any election held under this Act, subsequent to the organization of the district, the secretary who shall be appointed by the board of directors shall cause notice, specifying the polling places of each precinct, to be posted in three public places in each election, precinct of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notices, said board must appoint from each precinct, from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of the polls on the morning of election, the electors of the precinct present at the hour may appoint the board or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and the place in the precinct where the election must be held.

Sec. 156. (Sec. 9, Chap. 41, Laws 1919.) One of the judges shall be chairman of the election board and may: First—administer all oaths required in the progress of any election. Second—appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify the oaths required to be administered during the progress of an election. Before opening the polls, each member of the board must take and subscribe an oath to faithfully

perform the duties imposed upon him by law. An elector of the precinct may administer and certify such oath. The polls must be opened at eight o'clock in the morning of election and be kept open until six o'clock p. m. of the same day. It shall be the duty of the clerk of the board of election to forthwith deliver the return duly certified to the board of directors of the district.

Sec. 157. (Sec. 10, Chap. 41, Laws 1919.) No list, tally paper, or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the votes cast for each person voted for, or as to each question voted upon, and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes so returned for each office and also declare the results as to any question submitted.

Sec. 158. (Sec. 11, Chap. 41, Laws 1919.) The secretary of the board of directors must, as soon as the result of any election held under the provisions of this act is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located, a statement of such result, which statement must show: First, a copy of the publication notice of said election; second, the names of the judges of said election; third, the whole number of votes cast in the district and in each precinct of the district; fourth, the names of the persons voted for; fifth, the number of votes cast in the district for each of such persons; sixth, the names of the persons declared elected; seventh, the result declared on any question submitted, in accordance with the majority of the votes cast for or against such question. The secretary must immediately make out and deliver to the person elected a certificate of election, signed by him and authenticated with the seal of the board. In case a vacancy in the board of directors by death, removal, or inability from any cause to properly discharge the duties as such director, the vacancy shall be filled by appointment by the remaining members of the board, and upon their failure or inability to act within thirty days after such vacancy occurs, then upon petition of five electors of said district the board of county commissioners of the county where the office of said board of directors is situate, shall fill such

vacancy or vacancies. Any director appointed as above provided shall hold his office until the next general election of said district, and until his successor is elected and qualified.

Sec. 159. (Sec. 12, Chap. 41, Laws 1919.) The directors, having duly qualified, shall organize as a board, elect a president from their number, and appoint a secretary. The board shall have power and it shall be their duty to adopt a seal, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employes as may be required and prescribe their duties, establish equitable rules and regulations for the distribution and use of water among the owners of said land and generally perform all such acts as shall be necessary to fully carry out the purposes of this act; which regulations, among other things, shall provide that no water shall be delivered from the irrigation system of the district for irrigation of any land while the taxes or tolls due thereon or from the owner thereof for district purposes levied or imposed under the provisions of this act are in arrears for more than twelve months. As soon as practicable after the board shall have organized it shall employ a competent hydraulic engineer to determine and report upon the water supply available for the district which report shall be a full and complete record of all hydrographic data available and relating to the stream, streams or other sources of water supply from which water for the district is to be obtained; the report shall contain an estimate of the average amount of water available for each acre of land per year and shall show approximately the probable amounts available for irrigation or storage during each week of the year. The report accompanied by an examination fee of \$25.00, shall be submitted to the State Engineer for his examination and if he shall find such report to be a full and complete record of the available hydrographic data, that the calculations are correct, and that there will be water in the source or sources of supply sufficient to properly irrigate the lands included within such district, he shall so certify under his hand and official seal. If the report submitted is found to be insufficient, or incorrect, the State Engineer shall return the same for correction to the directors of the district with a statement of his objections. If such report is not corrected so as to meet with the approval of the State Engineer or if from such report and other available information the engineer is of the opinion that there is not sufficient water in the source or sources of supply to properly irrigate the lands included within said district, he shall disapprove said report.

The board of directors shall have the right to appeal from the decision of the State Engineer to the district court of the district in which such irrigation district is located, where

the sufficiency and accuracy of the report and available water supply shall be determined. Until the report is approved by the State Engineer or the courts, no bond issue shall be made as provided for in section 15 of this act. A copy of such report shall be kept on file in the office of the State Engineer and the secretary of irrigation district, and shall be available for examination by any person desiring to do so.

Said board shall have the power (in addition to the means to supply water to said district) to construct, acquire or purchase any and all canals, ditches, reservoirs, reservoir sites, water water rights, rights of way, or other property necessary for the use of the district and to contract with any person, corporation or other irrigation district for supplying water for any or all of the lands in said district; and also to construct drainage works necessary to prevent or relieve the water logging of any lands within the district. In case of the purchase of any property by said district the bonds of the district hereinafter provided for may be used at their par value in payment without previous offer of such bonds for sale. But no contract involving a consideration exceeding ten thousand dollars and no contract for the purchase, rental or delivery of water involving annual charges or payments exceeding fifteen thousand dollars per annum shall be binding unless such contract shall be authorized and ratified in writing by not less than a majority of the qualified electors of said district according to the number of votes cast at the last preceding district election; nor shall any contract involving payment in excess of twenty-five thousand dollars in any one year be binding until such contract shall have been authorized and ratified at an election held in the manner provided for the issue of bonds.

The rules and regulations established by said board shall be printed in convenient form as soon as the same are adopted, for distribution in the district. All waters distributed shall be apportioned to each land owner pro-rata to the lands assessed under this act within such district. The board of directors shall have power to lease or rent the use of water or contract for the delivery thereof to occupants of other lands within or without the said district at such prices and on such terms as they deem best, provided the rental shall not be less than one and one-half times the amount of the district tax for which said land would be liable if included in the district lands assessed under this act; Provided, no vested or prescriptive rights to the use of such water shall attach to said land by virtue of such lease or such rental; Provided, also, that any land owner in said district may with the consent of the board of directors assign the right to the whole or any portion of the water so apportioned to him for any one year where practicable to any other

bona fide land owner but only in case such owner shall have paid all amounts due on assessments upon all such lands.

Sec. 160. (Sec. 13, Chap. 41, Laws 1919.) The board of directors shall hold a regular quarterly meeting in their office on the first Tuesday in January, April, July and October of each year and such special meetings as may be required for the proper transaction of business. All special meetings shall be called by the president of the board, or any two directors. All meetings of the board must be made public, and two members shall constitute a quorum for the transaction of business; and on all questions requiring a vote there shall be a concurrence of at least two members of said board. All records of the board must be open to the inspection of any elector during business hours. The board, its agents, and employees, shall have the right to enter upon any land in the district to make surveys and to locate and construct any canal or canals and the necessary laterals. Said board shall also have the right to acquire all lands, water rights, franchises and other property necessary for the construction, use, maintenance, repair and improvement of its canals, ditches, reservoirs and water works; and shall also have the right by purchase or condemnation to acquire rights of way for the construction or enlargement of any of its ditches, canals or reservoirs, also lands for reservoir sites.

The title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, in its corporate name, and such property shall be held for the uses and purposes set forth in this act, and shall be exempt from all taxation.

Sec. 161. (Sec. 14, Chap 41, Laws 1919.) The said board is hereby authorized and empowered to take conveyances or contracts for all property or rights acquired by it under the provisions of this act in the name of such irrigation district to and for the purposes herein expressed, and to institute and maintain any and all actions, proceedings and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any or all rights, privileges and immunities created by this act or required in pursuance thereof. And in all courts, actions, suits, or proceedings the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits and proceedings in any court of this state of the organization and existence of any irrigation district in this state now or hereafter organized, from and after the filing for record in the office of the county clerk of the certified copy of the order of the board of county commissioners mentioned in section 6 of this act; and a certified copy of said order shall

be prima facie evidence in all actions, suits and proceedings in any court in this state of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth, and any such irrigation district in regard to which any such order has been heretofore or may hereafter be entered, and such certified copy thereof so filed for record, and which has exercised or shall exercise rights and powers of such district, and shall have had or shall have in office a board of directors exercising the duties of their office and the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established and existing irrigation district within the meaning of this act, and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this act or otherwise.

Sec. 162. (Sec. 15, Chap. 41, 1919.) For the purpose of constructing or purchasing or acquiring necessary reservoir sites, water rights, canals, ditches and works, including necessary drainage works, and acquiring the necessary property rights therefor, for the purpose of paying the first year's interest upon the bonds herein authorized, and otherwise carrying out the provisions of this act, the board of directors of any such district shall, as soon after such district has been organized as may be practicable, estimate and determine the amount of money necessary to be raised for such purposes, and shall forthwith call a special election, at which election shall be submitted to the electors of such district possessing the qualifications prescribed by this act the question of whether or not the bonds of said district shall be issued in the amount so determined. A notice of such election must be given by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks immediately preceding the date of such election. Such notice shall specify the time of holding the election, the amount of bonds proposed to be issued, and said election must be held and the results thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this act governing the election of directors: Provided, that no informalities in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds, Yes," or "Bonds, No" or words equivalent thereto. If a ma-

jority of the qualified electors who are freeholders within said district have voted "Bonds, Yes" the board of directors shall immediately cause bonds to be issued in amounts and payable in series as follows, to-wit:

At the expiration of eleven years, not less than five per cent of the whole amount and number of said bonds; at the expiration of twelve years, not less than six per cent of the whole amount and number of said bonds; at the expiration of thirteen years, not less than seven per cent of the whole amount and number of said bonds; at the expiration of fourteen years, not less than eight per cent of the whole amount and number of said bonds; at the expiration of fifteen years, not less than nine per cent of the whole amount and number of said bonds; at the expiration of sixteen years, not less than ten per cent of the whole amount and number of said bonds; at the expiration of seventeen years, not less than eleven per cent of the whole amount and number of said bonds; at the expiration of eighteen years, not less than thirteen per cent of the whole amount and number of said bonds; at the expiration of nineteen years, not less than fifteen per cent of the whole amount and number of said bonds; at the expiration of twenty years, a percentage equal to the remainder of said bonds. Each bond must be payable at the given time for its entire amount, and not for a percentage and said bonds shall bear interest at the rate of not to exceed six per cent per annum payable semi-annually on the first days of June and December of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected as aforesaid or at such other place as the board of directors may designate in such bonds. Said bonds shall be each of the denomination of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and shall be negotiable in form, executed in the name of the district and signed by the president and secretary and the seal of the district shall be affixed thereto. Said bonds shall be numbered consecutively as issued, and bear date at the time of their issue. Coupons for the interest shall be attached to each bond bearing the lithographed signature of the president and secretary. Said bonds shall express on their face that they are issued by the authority of this act, stating its title and date of approval. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received, and the name of the purchaser. Provided, that any such district may, by a majority vote of the qualified electors of such district, provide for the issuance of bonds that will mature in any number of years less than twenty, and arrange for the payment thereof, in series as above provided: Provided, also that when the money provided by any previous issue of bonds has be-

come exhausted by expenditures herein authorized therefor and it becomes necessary to raise additional money for such purposes, additional bonds may be issued after submitting the question of issuing such bonds at a special election to the qualified voters of said district, and otherwise complying with the provisions of this act in respect to an original issue of bonds: Provided, further, that the lien for taxes for the payment of the interest and the principal of any bond issue, shall be a prior lien to that of any subsequent bond issue.

Sec. 163. (Sec. 16, Chap. 41, Laws 1919.) The board may sell bonds from time to time in such amounts as may be necessary and most advantageous to raise the money for the construction or purchase of canals, reservoir sites, reservoirs, water rights and works, including necessary drainage works, and otherwise to fully carry out the objects and purposes of this act. Before making any sale the board shall, at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given by publication thereof by three insertions at least twenty days prior to such sale in a daily newspaper published in the City of Santa Fe and a like notice in a daily newspaper published in the City of Albuquerque, and any other newspaper at their discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids; but said board shall, in no event, sell any of said bonds for less than ninety-five per cent of the face value thereof. In case no bid is made and accepted as above provided, the board of directors is hereby authorized to use said bonds for the purchase of canals, reservoir sights, reservoirs, water rights and works, or for the construction of any canal, reservoir and works, including drainage works, provided, such bonds shall not be so disposed of at less than ninety-five per cent of the face value thereof.

Refunding bonds may be issued and used by any district organized under the laws of this state, for the purpose of retiring any bonds which may have been issued under the provisions of this act after the question of issuing such refunding bonds shall have been submitted to an election as herein provided and shall have received the affirmative vote of a majority of those voting thereon within such district. Such refunding bonds may be payable at such time or times and bear such rate of interest not exceeding six per centum per annum and may be of such denomination as the board of directors may determine and shall be executed in the same manner and have

annexed interest coupons as provided herein for the original issue of bonds. The board of directors shall have power to contract for the purchase, and exchange of refunding bonds for, the whole or any part of the bonds to be refunded by such issue at any price not exceeding par and accrued interest. Such refunding bonds shall first be deposited with the county treasurer of the county wherein the office of the district is located and shall be delivered only as and when bonds so to be refunded in like amounts are surrendered to such county treasurer for cancellation. Such refunding bonds may also be sold from time to time in such amounts as the board of directors may determine and in the same manner as provided for the sale of the original issue of bonds, at not less than ninety-five per cent of their face value, the proceeds to be deposited with the said treasurer to be paid out by him upon order of the board of directors in exchange for any of the outstanding bonds that may be so purchased or contracted for by the board of directors at a price not exceeding par and accrued interest.

And the said treasurer may use such proceeds at any time in his hands to pay the principal and interest of any matured outstanding bonds presented for payment in case he has not sufficient funds of the district otherwise provided for paying such maturing bonds.

The said treasurer shall cancel all bonds of the district as and when the same are paid or refunded and shall cause to be recorded in the office of the county clerk of said county his certificate showing that said bonds giving the dates, serial numbers and amounts thereof, have been paid and cancelled; and such cancelled bonds shall be delivered to the board of directors of the district to be destroyed. It shall be the duty of said board of directors to destroy such cancelled bonds and to enter upon their records a statement giving the dates, serial numbers and amounts of the bonds so destroyed.

Sec. 164. (Sec. 17, Chap 41, Laws 1919.) Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property within the district and such real property shall be and remain liable to be assessed and taxed for such payment as herein provided.

Sec. 165. (Sec. 18, Chap. 41, Laws 1919.) It shall be the duty of the board of directors, on or before September first of each year, to determine the amount of money required to meet the obligations, maintenance, operating and current expenses for the ensuing year, and to certify to the county commissioners of the county in which the office of said district is located, said amount, together with such additional amount as may be necessary to meet any deficiency in the payment of said obligations and expenses theretofore incurred.

Sec. 166. (Sec. 19, Chap. 41, Laws 1919.) It shall be the

duty of the county assessor of any county embracing the whole or a part of any irrigation district to assess and enter upon his tax roll each year the name of the owner and the description, and area of, each tract of land in said district in said county subject to taxation under this act, and to deliver a certified list thereof to the county commissioners of said county and to transmit a like certified list to the county commissioners of the county in which the office of said district is located; and upon receipt by such assessor of the notice from the county commissioners of the levies to be made as hereinafter provided, he shall extend the same upon his tax roll to be collected in the same manner as other taxes: Provided, that in no case shall any land be taxed for any purpose under this act, which from any natural cause cannot be irrigated by the irrigation system of said district, or is incapable of cultivation: Provided further, that such exception from taxation shall not apply to any land until after the same shall have been excluded for that purpose by order of the board of directors in a proper proceeding as provided by this act and after a certified copy of such order shall have been filed for record in the office of the county clerk of the county wherein such lands are situate.

Sec. 167. (Sec. 20, Chap. 41, Laws 1919.) It shall be the duty of the county commissioners of the county in which is located the office of any irrigation district, immediately upon receipt of the said certified list of the lands in said district subject to tax hereunder, and upon the receipt of the certificate of the said board of directors certifying the total amount of money required to be raised as herein provided, to fix the rate per acre of levy necessary to provide said amount of money and to fix the rate per acre necessary to provide the amount of money required to pay the interest and principal of the bonds of said district as the same shall become due; also to fix the rate per acre necessary to provide the amount of money required for any other purposes as in this act provided, and which are to be raised by the levy of taxes upon the lands of said district; and to certify said respective levies to the county commissioners of each other county embracing any portion of said district. The rate of levy necessary to raise the required amount of money for said district shall be increased fifteen per cent to cover delinquencies. For the purpose of said district it shall be the duty of the county commissioners of each county in which any irrigation district is located in whole or in part, at the time of making levy for county purposes, to make a levy, as above provided, upon all lands in said district within their respective counties subject to taxation under this act and to deliver a notice to the county assessor thereof. All taxes levied under this act are special taxes.

Sec. 168. (Sec. 21, Chap. 41, Laws 1919.) The county treasurer of the county in which is located the office of any irrigation district, shall be and is hereby constituted ex-officio district treasurer of said district, and said county treasurer shall be liable upon his official bond, and to indictment and criminal prosecution, for malfeasance, misfeasance or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. Said treasurer shall receive and receipt for all moneys belonging to said district. It shall be the duty of the county treasurer in each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes levied as herein provided, in the same manner and at the same time as is required in the receipt for and collection of taxes upon real estate for county purposes: Provided, that such county treasurer shall receive in payment of the district bond fund taxes above mentioned for the year in which said taxes were levied, interest coupons or bonds issued by said irrigation district maturing within said year, the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of district bond fund taxes which the person tendering the same owes. The county treasurer of each county comprising a portion only of any irrigation district, excepting the county treasurer of the county in which the office of said district is located, on the first Monday of every month, shall remit to the district treasurer aforesaid, all moneys, bonds and coupons theretofore collected or received by him on account of said district. Every county treasurer shall keep a bond fund account and a general fund account. The bond fund shall consist of all moneys received on account of interest and principal of the bonds issued by said district, said accounts for interest and principal each to be kept separate. The general fund shall consist of all moneys received. The district treasurer aforesaid shall pay out of said bond fund, when due, the interest and principal of the bonds of said district, at the time and at the place specified in said bonds, and shall pay out of said general fund only upon warrants signed by the president and countersigned by the secretary of said district, as herein provided. The district treasurer, on the fifteenth day of each month shall report to the board of directors of said district the amount of money in his hands to the credit of the respective funds above provided. All such district taxes collected and paid to the county treasurers as aforesaid shall be received by said treasurers in their official capacity and they shall be responsible for the safe keeping, disbursement and payment thereof the same as for other moneys collected by them as such treasurers: Provided, said county treasurer shall not receive any commission for the

collection of said district taxes or any extra compensation for acting as such district treasurer other than the regular salary as such county treasurer but the district shall pay to such treasurer for clerical assistance the sum of ten dollars per month for each five thousand acres or major fraction thereof in such district.

Sec. 169. (Sec. 22, Chap. 41, Laws 1919.) The revenue laws of this state for the assessment levying and collection of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes of this act, including the enforcement of penalties and forfeitures for delinquent taxes.

Sec. 170. (Sec. 23., Chap. 41, Laws 1919.) After adopting a plan for the construction of canals, resevoirs and works, the board of directors shall give notice, by publication thereof, not less than twenty days in a newspaper published in each of the counties into which any such irrigation district extends, provided a newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and the place for opening the proposals, which at said time and place shall be opened in public, and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any or all bids and re-advertise for proposals, or may proceed to construct the work under their own superintendence.

Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than ten per cent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge subject to the approval of the board.

Sec. 171. (Sec. 24, Chap. 41, Laws 1919.) No claims shall be paid by the district treasurer until the same shall have been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall state the date authorized by the board and for what purpose: Provided, no warrant shall be issued or obligation incurred unless the district treasurer has sufficient funds on hand to pay such warrant when it is presented for payment.

All claims against the district shall be verified and the secretary of the district is hereby authorized and empowered to administer oaths to the parties verifying said claims, the same as the county clerk or a notary public might do. The district treasurer shall keep a register in which he shall enter each warrant as issued and as presented for payment, showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment and all warrants shall be paid in the order of their presentation for payment to the district treasurer. All warrants shall be drawn payable to the claimant or bearer, the same as county warrants.

Sec. 172. (Sec. 25, Chap. 41, Laws 1919.) For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair and improvement of all canals, ditches, reservoirs and works, including drainage works and including salaries of officers and employes and for rental or charges for water supplied to said district under any contract with owners of other irrigation works, the board may fix rates of tolls and charges and collect the same of all persons using said canal and water for irrigation or other purposes, or may provide, in whole or in part, for the payment of such expenditures by levy of taxes therefor, as hereinbefore provided, or by both tolls and taxes. In case the money raised by the sale of bonds issued be insufficient and in case bonds be unavailable for the construction or completion of any works in accordance with plans adopted, it shall be the duty of the board of directors to provide for the completion of said works by causing the levy of a tax therefor in the same manner in which levy of taxes is made for the other purposes provided for in this act.

Sec. 173. (Sec. 26, Chap. 41, Laws 1919.) The board of directors shall have the power to construct the said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal or canals may intersect or cross; and if said board and the owners or controllers of the property so to be crossed cannot agree on the amount to be paid therefor, or as to the points or the manner of said crossings, the same shall be ascertained and determined in all respects as is provided by law in respect to the taking of land for public uses. The right-of-way is hereby granted to locate, construct and maintain said works or reservoirs, over, through, or upon any of the lands which are now, or may be the property of the state.

Sec. 174. (Sec. 27, Chap. 41, Laws 1919.) The board of directors shall each receive compensation at the rate of two and one-half dollars per day while attending meetings, and their actual and necessary expenses while engaged in official business. The

salary of the secretaary shall not exceed eight hundred dollars per annum. No director or any officer named in this act shall, in any manner, be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to derived therefrom; nor shall such director or officer receive any bonus, grautity, or bribe; and for any violation of this provision any such director or officer shall be deemed guilty of a felony, and upon conviction thereof shall forfeit his office, and be punished by a fine not exceeding five hundred dollars, or by imprisonment in the penitentiary not exceeding five years nor less than one year.

Sec. 175. (Sec. 28, Chap. 41, Laws 1919.) The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

Sec. 176. (Sec. 29, Chap. 41, Laws 1919.) In case the volume of water in any canal, reservoir, or other works in any district shall not be sufficient to supply the continual wants of the entire district and of lands susceptible of irrigation therein, then it shall be the duty of the board of directors to distribute all available water upon certain or alternate days to different localities as they may in their judgment think best for the interest of all parties concerned.

Sec. 177. (Sec. 30, Chap. 41, Laws 1919.) Nothing herein contained shall be deemed to authorize any person to divert the waters of any river, creek, stream, canal, or reservoir to the detriment of any person having a prior right to the waters of such river, creek, stream, canal or reservoir.

Sec. 178. (Sec. 31, Chap. 41, Laws 1919.) The boundaries of any irrigation district now or hereafter organized under the provisions of this act, may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it or the owner of lands therein were or might become liable or chargeable had such change of its boundaries not been made.

Sec. 179. (Sec. 32, Chap. 41, Laws 1919.) The holder or holders of title, or evidence of title, or any body of land adjacent to or situate within the boundaries of any irrigation district may file with the board of directors of said district a petition in writing, praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioners, but such description need not be more particular than is required when such lands

are entered by the county assessor in the assessment book. Such petition shall be deemed to give the assent of the petitioners to the inclusion of said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Sec. 180. (Sec. 33, Chap. 41, Laws 1919.) The secretary of the board of directors shall cause notice of the filing of such petition to be given and published once a week for three successive weeks in a newspaper published in the county where the office of said board is situate, which notice shall state the filing of such petition and the names of the petitioners; a description of the lands mentioned in the petition, and the prayer of said petitioners; giving notice to all persons interested, to appear at the office of said board at a time named in said notice, and show cause, in writing, if any they have, why the petition should not be granted. The time specified in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give such notice.

Sec. 181. (Sec. 34, Chap. 41, Laws 1919.) The board of directors, at the time and place mentioned in said notice, or at such time or times to which the hearing of such petition may be adjourned, shall proceed to hear the petition, and all objections thereto, presented in writing by any person showing cause as aforesaid why said petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the inclusion of such lands in said district as prayed for in said petition.

Sec. 182. (Sec. 35, Chap. 41, Laws 1919.) The board of directors to whom such petition is presented may require as a condition precedent to the granting of the same that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated by the board, as said petitioners or their grantors would have been required to pay for their pro rata share of all bonds and the interest thereon which may have previously thereto been issued by said district had such lands been included in such district at the time the same was originally formed or when said bonds were so issued; and said board may require such petitioners to pay such further sums as the board may deem just on account of irrigation works or water rights paid for otherwise than by issue of bonds.

Sec. 183. (Sec. 36, Chap. 41, Laws 1919.) The board of di-

rectors if they deem it not for the best interest of the district to include therein the lands mentioned in the petition, shall by order reject the said petition, but if they deem it for the best interests of the district that said lands be included the board may order that the district be so changed as to include therein the lands mentioned in the said petition. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries be changed thereby, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary: Provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the inclusion of such lands in said district, said order shall be held for naught and said lands shall not be included therein.

Sec. 184. (Sec. 37, Chap. 41, Laws 1919.) Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change, and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district as fully to all intents and purposes as if the lands which are included in the district by the change aforesaid had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district.

Upon the filing of the copies of the order and the plat, as herein mentioned, copies thereof, certified by said county clerk, shall be admissible in evidence to prove the inclusion of said lands in said district.

Sec. 185. (Sec. 38, Chap. 41, Laws 1919.) A guardian, executor or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign any petition or protest in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed or additional lands included therein.

Sec. 186. (Sec. 39, Chap. 41, Laws 1919.) In case of the inclusion of any lands within any district by proceedings under this act the board of directors shall, if they deem necessary, at least thirty days prior to the next succeeding regular election, make an order re-dividing such district into three divisions.

as nearly equal in size as may be practicable, and one director shall thereafter be elected for each division as hereinbefore provided.

Sec. 187. (Sec. 40, Chap. 41, Laws 1919.) Any tract of land included within the boundaries of any such district, at or after its organization under the provisions of this act, may be excluded therefrom, in the manner herein prescribed, but such exclusion of land from the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatever kind or nature; nor shall such exclusion affect, impair or discharge any contract, obligation, lien or charge for or upon which the district or the land so excluded is liable or chargeable, at the time such land is excluded from the district.

Sec. 188. (Sec. 41, Chap. 41, Laws 1919.) The owner or owners in fee of any lands constituting a portion of any irrigation district may file with the board of directors of the district, a petition praying that such lands may be excluded and taken from said district. The petition shall describe the lands which the petitioners desire to have excluded, but the description of such lands need not be more particular than required when lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land.

Sec. 189. (Sec. 42, Chap. 41, Laws 1919.) The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least three weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of said district lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties. The notice shall state the filing of such petition, the names of the petitioners, description of the lands mentioned in said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why said petition should not be granted. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall give such notice.

Sec. 190. (Sec. 43, Chap. 41, Laws 1919.) The board of directors at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be

adjourned, shall proceed to hear the petition and all objections thereto presented in writing by any person showing cause as aforesaid why the prayer of said petition should not be granted. The filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof.

Sec. 191. (Sec. 44, Chap. 41, Laws 1919.) The board of directors, if they deem it not for the best interest of the district that the lands mentioned in the petition or any portion hereof should be excluded from said district shall order that said petition be denied; but if they deem it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition, or some defined portion thereof, to be excluded from the district: Provided, if within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the exclusion of such lands from said district, said order shall be held for naught and such lands shall not be excluded therefrom.

Sec. 192. (Sec. 45, Chap. 41, Laws 1919.) Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change and a plat of such district showing such change, certified by the president and secretary, shall be filed for record in the office of the county clerk of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district as fully to all intents and purposes as if the lands which are excluded by the change aforesaid, had not been excluded therefrom.

Sec. 193. (Sec. 46, Chap. 41, Laws 1919.) At least thirty days before the next regular election of such district the board of directors thereof may, if they deem it necessary, make an order re-dividing said district into three divisions, as nearly equal in size as practicable, and one director shall be elected for each division as hereinbefore provided.

Sec. 194. (Sec. 47, Chap. 41, Laws 1919.) Whenever a majority of the resident freeholders, representing a majority of the number of the acres of the land included in any irrigation district organized or hereafter to be organized under this act, shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of said irrigation district a proposition to vote on the question of dissolution of said irrigation district, setting forth in said peti-

tion that all obligations, bills and claims of every nature whatsoever have been fully satisfied and paid, it shall be the duty of said directors, if they shall be satisfied that all obligations, claims and bills have been fully satisfied, to call an election, setting forth the object of the said election, and to cause notice of said election to be published in some newspaper in each of the counties in which any part of said district is located, for a period of thirty (30) days next prior to said election, setting forth the time and place for holding said election in each of the voting precincts in said district. It shall also be the duty of the directors to prepare ballots to be used at said election on which shall be written or printed the words: "For Dissolutiion—Yes," and "For Dissolution—No."

Sec. 195. (Sec. 48, Chap. 41, Laws 1919.) The board of directors shall name a day for canvassing the vote, and if it shall appear that a majority of said ballots contain the words, "For Dissolution—Yes," then it shall be the duty of said board of directors to make and cause to be entered upon their records an order declaring said district to be dissolved and to certify a copy of said order to the county clerk of each county wherein any part of said district is situated. And clerks shall record all such certificates in the records of the respective counties. Should it appear that a majority of the votes cast at said election were "For Dissolution—No," then the board of directors shall declare the proposition lost and shall cause the result to be made a part of the records of said irrigation district.

Sec. 196. (Sec. 49, Chap. 41, Laws 1919.) The board of directors of any irrigation district purporting to be organized under the laws of this state may commence special proceedings, in and by which the proceedings of said board and of the county commissioners for the organization of said district and for the authorizing the issuance and sale of the bonds of said district, whether said bonds or any of them have or have not been sold, or disposed of, may be judicially examined, approved and confirmed and the validity of said bond determined.

Sec. 197. (Sec. 50, Chap. 41, Laws 1919.) The board of directors of the irrigation district shall file in the district court of the county in which the lands of the district, or some portion thereof are situate, a petition praying, in effect, that the proceedings aforesaid may be examined, approved and confirmed by the court. The petition shall state the facts showing the proceedings or issuing said bonds was duly elected, but the petition need not state in detail the facts showing such organization or the election of said board of directors.

Sec. 198. (Sec. 51, Chap. 41, Laws 1919.) The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing

of such petition. The notice shall be published for three successive weeks in a newspaper published in the county where the office of the district is situated. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of irrigation district (giving its name), praying that the proceedings for the issue and sale of said bonds of said district may be examined, approved and confirmed by the court.

Sec. 199. (Sec. 52, Chap. 41, Laws 1919.) The provisions of the code of civil procedure respecting the demurrer and answer to a verified complaint shall be applicable to a demurrer and answer to said petition. The person so demurring and answering said petition shall be the defendant to the special proceedings, and the board of directors shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer shall, for the purpose of said special proceedings, be taken as true, and every person failing to answer the petition shall, in case said bonds are declared by the court to be valid, be estopped from thereafter questioning the legality of the organization of the district or the validity of said bonds in any proceeding. The rules of pleading and practice relating to appeals and writs of error provided by the code of civil procedure which are not inconsistent with the provisions of this act are applicable to the special proceedings herein provided for.

Sec. 200. (Sec. 53, Chap. 41, Laws 1919.) Upon the hearing of such special proceedings the court shall find and determine whether the notice of the filing of the petition has been duly published for the time and in the manner in this act prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of this act, from and including the petition for the organization of the district and all other proceedings which may affect the legality or validity of said bonds, the order of sale and the sale thereof. The court in inquiring into the regularity, legality or correctness of said proceedings must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings or others whose rights or interests are involved in such proceedings; and the court may by decree approve and confirm such proceedings in part and disapprove and declare illegal or invalid other subsequent parts thereof.

If the court finds that such proceedings have been legal and valid it shall by decree approve and confirm the same and declare the bonds issued and sold or to be issued or sold thereunder to be valid, and if the court finds any part of such proceedings for the organization of the district, or for the issue and sale of bonds or for the levy of taxes or other purposes of the district to be illegal, invalid or insufficient, it may direct such proceedings or action to be taken as will remedy the defects in the former proceedings; and upon presentation to the court of satisfactory evidence that such action or proceedings have been duly taken as directed the court may by its decree approve and confirm said proceedings and declare said bonds to be valid. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court.

The judgment or decree when finally made and entered shall be res judicata in all cases arising in connection with the organization of the district and the collection of taxes for payment of the principal or interest of the bonds or of monies due under contracts or obligations of the district.

Sec. 201. (Sec. 54, Chap. 41, Laws 1919.) Whenever the word "district" is used in this act it shall be held to mean and include only the lands described in the official order establishing said district and the official order including additional lands therein, if any, on record in the office of the county clerk and property and rights acquired by the district.

Sec. 202. (Sec. 55, Chap. 41, Laws 1919.) Any irrigation district organized after March 18, 1909, and prior to the passage and approval of this act, substantially in accordance with the provisions of Chapter 109 of the Session Laws of 1909, or of Chapter 60, New Mexico Statutes, Code 1915, or Chapter 100, Session Laws, 1915, or of Chapter 21, Session Laws of 1917, and any bonds or contracts authorized or issued by any such district substantially in accordance with the provisions of either of said chapters, are hereby confirmed and validated, and such irrigation districts (except districts organized to co-operate with the United States), so organized and existing prior to the passage and approval of this act, and the officers thereof, shall be governed by and be entitled to all the benefits of, and shall have, exercise and perform all the powers and duties prescribed by, the provisions of this act.

Sec. 203. (Sec. 56, Chap. 41, Laws 1919.) So much of any law as is in conflict or inconsistent with the provisions of this act is hereby repealed; but nothing herein contained shall be held or construed to in any manner affect any irrigation districts organized or to be organized to co-operate with the United States, under the reclamation service laws, or other federal laws, under Chapter 60 of New Mexico Statutes, Code

1915, as amended by Chapter 21, Session Laws of 1917, or any other law authorizing the organization of irrigation districts for the purpose of such co-operation. Chapter LX New Mexico Statutes, Code 1915, Chapter 100 Session Laws 1915, Chapter 21, Session Laws 1917, are hereby repealed.

Sec. 204. (Sec. 57, Chap. 41, Laws 1919.) That it is necessary for the preservation of the public peace, health and safety of the inhabitants of the State of New Mexico that the provisions of this act shall become effective immediately, therefore an emergency is hereby declared to exist and this act shall take effect and become in full force and effect from and after its passage and approval.

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Act of June 8, '12; L. '12, C. 26, §1.

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- City of Albuquerque v. Antonio Garcia et al., 17 N. M. 445.
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Prior appropriations where numerous tracts are concerned.

Meaning of prior appropriation.

Capacity of ditch alone does not constitute a valid appropriation.

Norton v. Hindrelider, 15 N. M. 666.

Extra cost of former is not sufficient to cancel in favor of latter project.

Cause remanded for facts, agreement or otherwise, essential to a satisfactory decision of the cause.

Oscar C. Snow v. Francisco Abalos, et al, No. 1626 Supreme Court file Chap. 1, S. L. 1895, was purely administrative.

In New Mexico "Colorado Doctrine" of prior appropriation prevails.

An appropriation does not acquire a right to specific water from a stream.

Intention to apply, followed with due diligence, and ultimate application gives right to water.

Community water user acquires a several right from stream or source of supply.

Such rights are not attached to ditch but appurtenant to land irrigated.

Sec. 1, Chap. 1, S. L. 1895, did not divest individual property rights theretofore owned or possessed.

A several right owner is proper and necessary party in an adjudication suit; a contract to assign does not militate against such a right.

Pueblo of Isleta v. Tondre, et al., 137 Pac. 86.

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Laws of 1907, Chap. 49, does not regulate community acequias construction prior to act, so as to affect the right to change point of diversion.

Rio Puerco Irrigation Co. v. Jastro, 141 Pac. p. 874.

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Financial inability not sufficient justification for an extension of time by the State Engineer. Approval of application for permit by district court, on appeal the appellate court presumes there is unappropriated water available.

Smith v. Hicks, 14 N. M. 560; 98 Pac. 138.

Damages collectible for not furnishing water.

"Furnished" use in the sense "deliver," water in controversy being artesian.

Territory v. Baca, 2 N. M. 183.

Same v. Tafoya, 2 N. M. 191.

Not a criminal act to violate acequia law of Jan 7, 1852.

Trambley v. Luterman, 6 N. M. 15; 37 Pac. 312.

Riparian rights not in force in New Mexico.

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Turley et al, v. L. B. Furman et al., 16 N. M. 253.

Permit cannot be issued to irrigate lands in New Mexico when diversion is from Animas river in Colorado.

U. S. v. Irrigation Co., 13 N. M. 386; 85 Pac. 393.

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U. S. v. Rio Grande Dam & Irrigation Co., 10 N. M. 617; 65 Pac. 276.

Dam would not impair navigability of stream.

Rio Grande in New Mexico not navigable stream.

U. S. v. Lee, 15 N. M. 382.

Acquiring right-of-way over unsurveyed public lands.

Vanderwork v. Hewes & Dean, 15 N. M. 439.

Sec. 12, Ch. 49, Laws 1907, relates to unappropriated waters within State.

Sec. 1 does not govern seepage water, any authority is found under Sec. 53, if such exists.

"Constructed works" means constructed reservoirs and ditches not artesian wells.

Certain classes of percolating water are a part of land and need not be applied for through Engineer.

Another owner can use seepage or drainage water from another's land subject to the prior right.

Water Supply Co. v. City of Albuquerque, 17 N. M. 326.

"Domestic use" is water as applied by family, for family use, and includes watering animals, but not use for public parks or public resorts, maintained by city, or temporary quenching of thirst of animals while engaged for working street.

Miller v. Klasner, 19 N. M. 21.

Held in a suit to enjoin A from interfering with a certain ditch and the distribution of water therefrom, where A was acting under the authority of B, not a party to the suit and who owned an interest in the ditch, and conducted water through the same for the irrigation of her lands, that B was a necessary party to the suit, as complainants right to the relief depended upon an adjudication of his right to the use of the ditch and water as against B.

La Mesa Community Ditch v. Appelzoeller, 19 N. M. 75.

The unlawful diversion of water from a community acequia, or the naked trespass, unaccompanied with great or irreparable damage or mischief, will not warrant equitable relief as the statute affords ample remedy.

Miller v. Hagerman Irrigation Company, 20 N. M. 604.

Section 5718, Code 1915, interpreted.

In re Dexter-Greenfield Drainage District, 21 N. M., 286.

Sections 1877-1958, Code 1915, interpreted.

Halford Ditch Company v. Independent Ditch Co., 22 N. M. 169.

Where two or more community ditches take water from a common ditch or head, and the lower ditch has engaged the upper one either by reason of a contract with the upper ditch or by reason of the common easement and acquiescence of the water right owners in said upper ditch, the lower ditch becomes a tenant in common with the upper ditch in the common structure, and as such is entitled to the joint management and control of the same in so far as the joint maintenance of the ditch is concerned.

Young v. Dugger, 23 N. M., 613.

Irrigation of lands by private persons constitutes a public use and lands of another may be condemned for ditch purpose in aid thereof.

Bolles v. Pecos Irrigation Company, 23 N. M. 32.

Right to perpetually receive water from canal constitutes an easement in the canal.

Rio Mimbres Irrigation Company v. Ervien, 23 N. M. 190.

Under circumstances stated held that obligor was not required to build a reservoir and judgment for breach of such provision held erroneous.

Hagerman Irrigation Co. v. E. Grand Plain D. D., 25 N. M., 649.

Artificial waters are not subject to appropriations under the statutes of this State. Natural waters flowing in streams and water courses are subject to appropriation. The creator of an artificial flow of water is the owner of the water so long as it is confined to his property, but when such artificial waters are deposited

into a natural stream, and the creator of the flow has lost his dominion over the same, such waters become a part of the waters of the stream and are subject to appropriations and use; but it is only after such waters reach the stream that they are subject to appropriation and use, and the appropriator or user of such waters can acquire no right as against the creator of the flow to require him to continue supplying such waters to the stream.

Where a drainage district, organized under the statutes of this state, constructs a drainage system, and the drainage ditch flows into an irrigation canal, no right on the part of the irrigation canal exists to require a continuation of such flow of water.

Acequia Llano v. Acequia Las Joyos, 25 N. M. 134.

The individual consumers under a community ditch or acequia, not having been made parties to the acequia's action against another acequia to enjoin diversion of water, etc., were not bound by the decree against defendant and their rights to use the water could not be adjudicated in action to which they were not parties.

State ex rel. Black v. Aztec Ditch Co., et. al., 25 N. M., 590.

In an action of mandamus to require officers of a community ditch to give to relator a specified portion of the waters carried by the ditch, the rights and priorities of the consumers cannot be adjudicated and the individual water users are not necessary or proper parties to the suit. If the rights of the users have not been adjudicated or fixed by agreement or contract, and are undetermined and unknown, mandamus will not lie, but the parties must first secure an adjudication of the rights of the consumers or water users.

Community acequias are public acequias within the meaning of Sec. 5731, Code 1915.

Sections 5744, 5759, 5763 and 5765, Code 1915, construed.

RULES
— OF THE —
BOARD OF WATER COMMISSIONERS
OF NEW MEXICO

Rule I. Clerk.

1. The clerk of this board shall reside and keep his office at Santa Fe and he shall not practice as an attorney in any case which may come before the board.

2. The clerk shall not permit any original paper or record to be removed or taken out of his custody without an order from the board.

Rule II. Transcript.

1. In every case of appeal from the decision, action or non-action of the State Engineer the appellant shall cause to be filed with the clerk a certified transcript of the record in the State Engineer's office, or of such portions thereof as are necessary to the review of the questions or issues involved, including copy of notice of appeal and proof of service, together with certified copies of papers, maps, plats, field notes and other data in the State Engineer's office pertinent to the matter in controversy.

2. In case appellee desires to take up more of the record than appears in the transcript filed he may have additional portions thereof certified and filed at his expense in the first instance, but in case the board determines the same to be necessary to a proper hearing of the case such expense shall be afterwards taxed as other costs in the case.

3. Where the transcript contains portions of the record not necessary for a proper determination of the questions or issues to be reviewed the costs of transcribing such unnecessary portions shall be taxed against the party procuring the same.

Rule III. Docketing.

1. The clerk shall enter and number all cases upon the docket in the order of filing, specifying upon the docket the dates of filing of the transcript and other papers.

2. The docket shall show in convenient form the names of the parties in each case, the names of their attorneys, the nature of the case, the filing of each paper, the appearances of parties, a brief statement of every notice, return, motion, order, judgment or other proceeding, with the dates thereof, and with reference to the journal or record of the board, the costs taxed for each item and all costs received, so that it will show in brief an outline of each case from the beginning and serve as an index to the journal or record of the proceedings of the board.

Rule IV. Cases.

1. Cases will be called and heard in the order in which they appear on the docket, except where a case may be advanced by order of the board.

2. Two or more cases involving the same questions may, by order of the board, be heard together and argued as one case.

Rule V. Appearance.

1. Parties may appear either in person or by counsel. Appearance by counsel must be evidenced by proper writing filed with the clerk.

2. When there is no appearance for appellant when the case is called for trial, appellee may have appellant called and move to have the appeal dismissed or may present evidence and argument and pray for judgment.

3. When there is no appearance for appellee when the case is called for trial, the board may proceed to hear evidence and argument on behalf of appellant and give judgment according to the right of the case.

4. When there is no appearance for either party when the case is called, the board may order the appeal dismissed at the cost of appellant.

5. In any case of no appearance for either or both parties the board may, in its discretion, order a postponement of the hearing.

6. In case either party does not desire to appear at the hearing he may submit printed or written brief or argument which will be considered and acted upon as if it had been presented personally.

Rule VI. Evidence.

1. At any hearing before the board either party may present oral or documentary evidence in addition to the record.

2. When either party desires to have testimony of witnesses transcribed he shall deposit with the clerk sufficient funds to pay for the same at the rates charged for transcribing testimony in cases in district courts of New Mexico.

Rule VII. Order of Argument.

1. The appellant shall be entitled to open and conclude the argument. Where there are cross appeals the protestant in the proceedings before the State Engineer shall be entitled to open and conclude.

Rule VIII. Motions.

1. All motions must be reduced to writing and filed with the clerk.

Rule IX. Motion for Rehearing.

1. Motion for rehearing may be presented only when filed with the clerk within ten days after decision and may be heard upon printed or written argument during, or upon oral, printed or written argument at the next regular or special meeting.

Rule X. Costs and Fees.

1. Costs will be taxed at the same rates as like costs in the district court of New Mexico and the clerk may require parties to make sufficient deposit to cover same.

2. Docketing, filing and other fees of the clerk shall be the same as in cases in the district court.

Fees of Clerk.

Docketing each case	\$2.00
Issuing each process or writ (except subpoena) and including all endoresements thereon.....	1.00
Copies of process to serve, each.....	.50
Filing any paper and entering upon docket, each.....	.15
Subpoena for witness, each25
Each certificate under seal.....	.50
Entering on journal and docket any motion, rule, order, judgment or decision25
And additional for each folio of 100 words or fraction thereof ..	.15
Taking and approving each bond.....	.50
Making necessary journal and docket entries upon dismissing an appeal	1.50
Issuing commission to take testimony.....	1.00
Certified copy of any decision, order or paper.....	.50
Additional for each folio of 100 words or fraction.....	.15

As to all matters not provided for in these rules, the rules of the Supreme and District Courts of New Mexico, in so far as they may be applicable, are adopted by the board.

